

**CONSTITUTION OF KENYA REVIEW COMMISSION
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NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL,
CHAPTER 5 – BILL OF HUMAN RIGHTS, HELD AT THE
BOMAS OF KENYA**

ON

8TH & 9TH MAY 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER 5 -
HUMAN RIGHTS ON 8TH MAY 2003**

**PRESENTATION OF DRAFT BILL , CHAPTER 5 – THE BILL OF HUMAN
RIGHTS**

Presenters: Com. Nancy Baraza

Com. Ibrahim Lethome.

Session Chair: Hon. Delegate Yusuf Haji

The meeting started at 12.10pm.

Hon. Delegate James Mwangi: Those who are still settling may do so. I would like to bring this meeting to order. I would like to thank you very much because of the first session that we had that was very successful. We would wish that we have the same cooperation of order in this session where we are going to have Hon. Hajji co-chairing with me. So I will invite Hon. Hajji to invite the presenters of today.

Hon. Delegate Yusuf Haji: Distinguished Delegates, as my co-chairman has stated, we are going to discuss Bill of rights, which is chapter five in the Draft Bill of the Constitution Kenya Review Commission. I would like to note from the on set, that although all the chapters are very important, everything that we doing in Constitutional making revolves around rights and therefore bill of rights are really very very important. Please listen attentively and follow the presenters. We are going to have one hour of presentation, after which we shall break for lunch and then come back for discussions. I have now the honor to invite the first presenter, Com. Nancy Baraza. Welcome.

Com. Nancy Baraza: Distinguished Delegates, ladies and gentlemen, my colleague or my learned junior here Mr. Ibrahim Lethome and I will have the privilege today of taking you through the bill of rights, that is chapter five of the draft Constitution and we shall share duties. I will deal with the first part which will be our mandate under the law and the scope of rights and the reasoning that went behind the proposals that we have put in the draft bill and my learned

junior will deal with the proposals as contained in the bill itself. Now yesterday we got this complaint that the presenters rushed through their presentation and indeed 15 minutes would not be really enough for anybody to explain the wisdom that or lack of it that went into, what we had proposed and I am happy that between and my friend we have slightly over one hour to do that.

Now I will start off by drawing your attention to our legal basis for having carried out our duty on the draft and that is the Constitution of Kenya Review Act chapter 3A. I am sure all of you have a copy, that is our Bible here or our Koran and I want to draw your attention to Section 3 of the Constitution of Kenya Review Act and then Sec. 17 of the same Act. That is where we draw our legal mandate to look at the issues of Human Rights and basic needs that we have proposed in the draft Bill. Section 3 and I take the trouble to run you through the legal mandate because from the discussions we had yesterday, I feel it is necessary that we know where we are coming from and at what stage we are in the entire process. As at the time of the formulation of this Act, I think Kenyans had engaged in a long struggle to get this process going and there are basic principles that had been agreed on and those are the ones that went into that Act and they form the basic requirements that we needed to have complied with, to come up with the proposals that we have made.

As concerns rights, I will draw you attention to Section 3B of Cap 3A that the Constitution of Kenya Review Act and B reads, “establish or our mandate as of the object of the Review process is to establish a free and democratic system of government that enshrines good governance, constitutionalism, the Rule of law, Human Rights and Gender Equity” and probably here what drew my attention yesterday was the issue of gender equity because Delegates seem to be going backwards you know, below what this Act calls upon us as Delegates to look into. I think the law at this stage has acknowledged the fact that there has been lack of Rule of law, there has been abuse of human rights, that there is gender disparity in this country and those are things we need to address. Not to ask questions as to whether women should get rights or not. The Law says that that has been recognized that the issue needs to be addressed.

Now I will go to E of Section 3. “In carrying out our mandate, we need to respect ethnic and regional diversity and communal rights including the right of communities to organize and participate in cultural activities and the expression of their identities”.

F, “we need to ensure the provision of basic needs of all Kenyans through the establishment of an equitable framework for economic growth and equitable access to national resources”.

G, we need to promote and facilitate regional and international cooperation to ensure economic development, peace and stability and to support democracy and Human Rights. Now I take you to Section 17 of that same Act. I will take you to Section 17, subsection D3: that we need to examine and recommend improvement to the existing institutions and offices and establishments of additional ones to facilitate constitution of governance in the respect of human rights and gender equity in Kenya as indispensable and integral part of the enabling the environment for economic, social religious, political and cultural development. If you go to subsection 10 there, we need to examine and review the right to citizenship and recommend improvement that will in particular ensure gender parity and conferment of their rights. The following subsection we need to examine and review, the social cultural obstacles that promote various forms of discrimination and recommend improvement to secure equal rights for all and the following one we need to examine and review the rights of the child and recommend mechanism that will guarantee protection thereof. So that, ladies and gentlemen is our legal mandate and it is the one that has informed the proposals that we have put in our draft.

I need to touch briefly on the history of our current bill of rights, because then it will give us the scope of the rights that we have had and the reason that we have tried to enlarge that scope in the draft. Now, Hon. Martin Shikuku, the Veteran of Lancaster will tell you that our independence Constitution had given the Bill of Right a very, very prominent position. It was chapter 1 of the Constitution, but as we know now it occupies chapter 5. It has moved places and that shows you how we as a country have treated our rights and freedom. At independence our bill of right was one of those specially entrenched provisions which needed 75% majority at the Lower House to amend and another 90% at Senate before you could amend it. But we know that in 1964 this provision was removed and therefore our bill of right stops enjoying that specially entrenched position.

Then another thing about our independence Constitution and the bill which is chapter 5 of the current Constitution, is that it provided for a limited scope of rights. It provided for what we call

the traditional civil and political rights and those were modeled along the European Conventional of Human Rights and fundamental freedoms and as we know at that time, the issues of the day were of course the civil liberties of the people and therefore I think that is the reason that it gave us that limited scope of rights and of course we are talking about the rights to life, it provides for that, rights to personal liberty, rights for freedom from slavery, forced labor, rights to property, rights of conscious, movement, expression etc. But then it stops there and we argue that this is not wide enough because even then---- is there something?

Response: (inaudible)

Com. Nancy Baraza: So in our reasoning over the years, the scope of rights have since been expanded and we have now what we call the economic social and cultural rights, which include basic rights and if you have gone through the draft, you will find that we have made very very elaborate provisions for basic rights. Things like right to education, right to shelter, right to health care etc. Those ones are not contained in our current Constitution and I have given you the reason why. Then again over the years another set of rights have come up, what we call solidarity rights. These are rights concerning peace, concerning security, concerning safety of the environment and development rights. Those are not contained in our current Bill of rights and therefore we have tried to introduce them in our draft Constitution.

The reason is that there are universal or internationally recognized standards of human rights and that is the universal nature of the human rights, the interdependent nature of all the human rights and the invisible nature of those human rights, so that for us to talk about civil liberties, for example right to vote without talking about a basic need like rights to food, it would not be realistic, because a person can only exercise their rights to movement, to go to votes or to do other things if they are food, if they are in a position to move. And therefore you cannot separate this set of rights and that is why we have found it necessary to introduce all of them in our bill of rights.

Now a part from the limited nature of the rights that we have in our current Constitution, our bill of rights has other shortcomings in the sense that, it made no provision for the rights of marginalized people, for example rights of children are not there, rights of women are not there,

rights of minorities are not there, the rights of elderly people are not there, the rights of people with disabilities are not there. And our modern Constitution not addressing those rights is definitely not a good Constitution and if you run through our draft as my learned friend here will do, we have tried to address that deficit in our Constitution. And the sad defect in our current bill of right is that there are no provision for access to justice by the Kenyan people and especially the indigent Kenyans or the poor Kenyans, there is no such provision and my learned friend will show you in our draft bill that we have tried to make provision in the draft bill for rights of access to justice.

Then another deficiency in our current bill of right is that it lacks specialized mechanism containing most Constitutions to enforce those rights, so that even if it gives us those limited rights, there are not proper mechanism described by the Constitution through which we can enforce or enjoy our rights. Now in our current draft we are trying to introduce such mechanism, like the human right and administrative justice Commission, we have the ombudsman whom we are calling the people's protector. We have other institutions and those are very, very necessary mechanisms that will make Kenyans realize and enjoy the rights that we are trying to provide.

Then the other shortcoming in our current bill of rights, is that it has too many limitations. If you read it, our current chapter 5, it gives the right and then following that right there so many exceptions, to an extent it ends up giving you the rights with one hand and it immediately takes it away with the other hand. And the practice with our Judiciary hasn't been very good in terms of enforcement and interpretation of the rights and fundamental freedoms of the people of Kenya. So what the draft bill is trying to do, it has provided for a limitation clause, quite at the beginning of the chapter as a principle so that it specifically laid down or circumstances under which the rights that we have given to Kenyans can be Delegated. But if we go by our current bill of rights, I think the exceptions have gotten more prominence when it comes to interpretation and enforcement than the right themselves and Constitution lawyers here will tell you that you will hardly find a case in which a citizen has gone to court to litigate on his or her rights and has succeeded. Not Kenyan, I think very very circumstances as a citizen won a human right case against the state. So that is what we are trying to cure in the draft bill.

The other thing I would want to talk about is the enforcement of the rights. Our current bill of rights again although at Section 84, the High Court has been granted powers to enforce the bill of rights. I mean Kenyans will argue that it has failed to do so. So what we are trying to do in the draft bill is to provide specifically for enforcements mechanisms. Put standards on the courts on how to enforce these rights and my good friend here will run you through them. So those are my brief comments on our current bill of rights.

Again what has been formed as in the draft, is the international law that obtained now. The international and regional agreement and covenants to which Kenya is party and which is now the international law relating to rights and Kenya being a member of the international community has committed itself to apply, to enforce those rights at our local level and I will start by saying that article 30 subsection 6 of the draft bill, we are requiring that the government must fulfill all its international obligation in respect of all human rights. Now if we look at the United Nations Charter. We know Kenya is a member of United Nations, we at no stage have we failed to sit at doors in United Nations sittings, we were subscribed to the UN standards on human rights. The United Nations Charter at its preamble, it commits all its members to promote economic, social and cultural progress for the better standards of the lives of its people.

The other covenant is the United Nations declaration on human rights. As its preamble it gives one of this objectives as a freedom from fear and wants. It commits its members to commit itself from protecting its people from freedom from fear and wants and if we look at the International Convention on economic social and cultural rights. It provides that these rights for specific groups, such as the vulnerable and other historically deprived groups must be looked into. Then we look at the convention on the elimination on all forms of discrimination against women that we call it in short FEDO that is the convention of 1979. It recognizes the discrimination against women as an obstacle to their participation in equal terms with men in the political, social and economic activities of their country if prohibited. Then we have the convention and the rights of the child which recognizes the special need and protection for the rights of the child. Then we have the convention on the people with disabilities which recognizes them as vulnerable persons that need to be protected and their rights promoted. We have the international law on refugees and asylum again we have tried to address that in the draft bill. We have the international

convention on elderly members of society, which recognizes their vulnerability and advises for the promotion and protection of their rights.

At regional level of course Kenya again is a signatory to the African Charter on peoples and human rights and these of course gives high priority to economic social and cultural rights. The preamble to the African Charter on peoples and human rights, urges that attention be paid to the rights to development and not the higher interdependency of the family. So what I'm trying to say honorable Delegates, is that in trying to bring the proposals that we have brought in our draft, we have been backed by the law that is the Constitution of Kenya Review Act, we have been backed by International Treaties and Regional Agreements to which Kenya spends money sending Delegate and signing and we cannot escape from that and again I will draw you to our basis upon which we have made this recommendation and that is the views of the people of Kenya. We all have the main report of the Constitution, we must have read it and now I take you to page 79, what the people of Kenya said about rights. They are there, this is the report, you may use the green one or you use the orange one. The green one is at page 79 and the orange one is at page 137, and we got very many submissions from the people of Kenya on what they wanted about their rights. Most of them of course said that they wanted their rights protected more, they wanted the restrictions on their rights be removed and they complained very very bitterly against the arbitraries of the police and the provincial administration in depriving them of their rights. I remember very vividly a man in Kakamega you know he was so embarrassed to say what it is, what he wanted to say. So he came to whisper to me and you can imagine a man being woken up at 1.00 a.m. from his bed and slapped in front of his wife and children by the police. You know they are always looking for chang'aa, they are looking for what in the process they are violating their rights and people generally felt that their rights have been violated and they wanted this addressed.

Most people were concerned about denial of basic needs. They have no access to most basic needs like water, most people are hungry, most people are naked, most people are deprived. We went to places where we just couldn't believe it. There are people in this country who go for two weeks without food. We went to places like North Eastern Province and some parts; quite a number of parts in Eastern Province, and these are place where people go for months without

food. You look at them and you shed tears. In fact you come back and you stop eating 3 meals in a day and that is, they wanted that addressed.

Education as a right, most people probably will be happy now that there is free education that their children are going to school. Otherwise the main complaint was that they are so poor now, they are in no position to take their children to school and there is nothing as frustrating as them seeing their children not going to school.

Then a right to access to medical care. Again this was a big request from all over the country. People are so poor, they need subsidized medical care. Shelter of course we know people are going without shelter, older people have been neglected, they have no food the traditional family set up has collapsed and they are in abject poverty. Leave alone even clean water. There are so many places in this country without water. I remember Commissioners coming back from those tours of some parts of the country and for a week or so they couldn't just talk. I think out of shock, because something like water, people going probably for a year without water and that is the true situation in this country. People with disability we have marginalized them they came up, they gave their views and they need their rights to be protected. They have families, yet we as a country have done very little to assist them in any way. Children of course and I'm happy already we have the Children's Act. It is the first domestication of International Law that we are having. So we had all these submissions from the people of Kenya that they have been tortured, they have been treated inhumanely, they lack basic needs and I think that informs what went into our Draft. So, with those remarks I now hand over to my learned friend to run you through the Bill.

Com. Ibrahim Lethome: Thank you very much Nancy. As my colleague has just shared with you honourable Delegates, most of the submissions that we received as a Commission were on human rights. And of course you remember there was a time Kenyans were told that Wanjiku wouldn't know what to say about making a Constitution. But we were surprised when we went around what the Wanjikus, the Nafulas of this country knew about Constitution making but in their own languages.

Take an example of this very old lady in Kakamega, Bukhungu Stadium who stood up and I said, 'all I want to tell the Commission is that in the new Constitution, can you stop the chief from taking my 'ingokho' without my permission'. She wanted her property rights protected. 'Can you tell the chief that this is my private property that it should not be taken away from me without my permission and can you also tell the chief not to overstep his powers', – fair administration. Kenyans knew what to ask for but in their own languages.

I think some places, you go to the Coast Province amongst the Mijikenda and they will tell you that God created the 'mnazi' for us, that is a basic right, we want a law that will protect and legalize the 'mnazi'. You go to Bungoma the Bukusu people tell you, 'tunataka sheria ambayo itakubali wazee wakule kile chakula chao'. Unawauliza chakula gani? 'Busaa' yaani pombe yao. People knew what they wanted but they put it in their own languages. Of most of these could not be put in the Constitution under the Bill of Rights.

So, this is the longest chapter in the Draft Bill since it runs from Article 29 to Article 75, so we are talking of 46 Articles in general. My colleague has given you an overview and I will now go into the specific Articles and of course I am being informed by yesterday's proceedings that we should try to take the Delegates slowly through these Articles so that at least each one of us can approve them and be able to comment in an informed way.

When you look at article 29 on page 7, depending on what Draft you are using, the green one, that's where we have the Bill of Rights on page 7, Article 27 provides that the Bill of Rights is the foundation stone of Kenya's democratic State. Under sub Article 2, we have tried to answer the question as to what is the purpose of recognizing these basic rights? And the answer that we have provided for there is, to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.

After that, the other question that we have tried to answer here is: Whose rights are we talking about? Are they the rights of the rich, the rights of the poor, the rights of those in power, the rights of the subjects in the country? And the answer is under Act sub Article 3 (a). These rights that we are talking about under this Bill of Rights belong to each individual and are not granted by the State and the State cannot equally take them away. So, these are rights that belong to

every Kenyan and under sub Article 3 (b), they do not exclude other rights meaning that all the rights that have been enlisted under this Bill of Rights are not exhaustive, these are not exhaustive rights. These are just some of the basic rights.

Then under sub Article 3 (c), we have provided that these rights are not absolute. Of course even rights that you have been given by God are not absolute, they are subject to certain limitations and in the following Articles, that is Article 31, we provided for the limitations. My colleague has just said what we heard from the people of Kenya. What they told us is that under the current Constitution, of course the rights have been provided for but the limitations are just too many to the extent that people are not able to enjoy those rights. So, we have tried to listen to Kenyans very carefully in Drafting that Article on limitation.

Article 30 places the responsibility and duty to respect, promote and protect these rights on the State. So the State shall observe, respect, protect, promote and fulfill the rights and freedoms in this Bill of Rights. Under sub Article 2, we provided that it's the primary duty of every State organ to give effect to Clause 1, that is, make sure that all the rights are observed, protected and promoted and in making policy, this has to be taken into consideration. Also in implementation of policy this has to be borne in mind and when any State organ is performing its functions, then those functions should be performed having in mind the basic rights of the citizens of the country.

When you look at Sub Article 4, I am still on Article 30; sub Article 4, it provides that Parliament and the Commission on Human Rights and Administrative Justice shall establish standards for the achievement of rights mentioned in the previous sub Article. Sub Article 5 also provides for the role of civil society in observing, protecting and promoting these basic rights, that is, sub Article 5. Sub Article 6 is what my colleague has just taken you through whereby Kenya has a responsibility to fulfill its international obligations on human rights.

Then over the page Article 31 is where we have the limitations of rights. We know that these rights could be provided for under the Bill of Rights but they could be arbitrarily limited or taken away. So what we have provided for under this sub Article is that these basic rights can only be limited through law. They can only be limited by law of general application and only to the

extent that the limitation is reasonable and justifiable. So, whoever maybe intends to limit your rights or your enjoyment of these basic rights has to show that it is not in breach of the law and it is reasonable and justifiable.

Over to Article 32, we begin now enlisting the rights and the first right is the right to life. As we went around we received numerous submissions on the issue of the death penalty whereby many Kenyans were totally against the death penalty. So the provision there is that the death penalty be abolished, that is, under Sub Article 2. In fact what they were telling us is that life is given by God and only God has the right to take it away. They also told us that when you talk about the protection of life or the right to life, we are talking about life from conception to death.

Sub Article 33 provides for equality and the submissions that we received on this issue of equality especially equality between men and women, some of the submissions were astonishing. In fact in some of this country, when people are talking about equality when it comes to inheritance, some men were telling us – especially in parts of Nyanza – that ‘my girl child is not supposed to inherit from me, she should inherit from her husband’. Then we would ask, ‘suppose she doesn’t get married, is that an offence?’ They said, ‘if she doesn’t get married we shall look for an old man to marry that girl’. They were even going a step further and saying, ‘if the government can find a place or space for wild animals in the park, why can’t they find some space in Ruma Park – and that is infested by tsetse flies by the way – to put the girls there? And what we were telling them, and I’m in fact telling all the men here including myself, when you are talking about women let’s not look at that woman that you married, look at your daughter, your mother, your sister, your aunt and those women you feel very close to before you look at that woman that some languages would call ‘mundu wa nja’ like the Kikuyus use that word ‘mundu wa nja’ – a person from outside.

So, on equality we provided that every person is equal before the law and has the right to equal protection and equal benefits of the law. Equality includes the full and equal enjoyment of all rights and freedom. Go to North Eastern Province and they will tell you whereas every Kenyan carries one ID card they carry two; one, the ordinary one that we all carry and two, something called – is the green card or the screen card? – a screen card. So that we were informed by such submissions.

Freedom from discrimination under Article 34. So the State shall not unfairly discriminate directly or indirectly against anyone on one or more grounds; the grounds have been enlisted there, either because of race, sex, pregnancy, marital status, ethnic or social origin, colour, age, disability, religion, conscience, beliefs, culture, language or birth. All Kenyans are equal. And a person shall not unfairly discriminate directly or indirectly against another person on one or more of the grounds that have been enlisted under Sub Article 1.

Sub Article 3 provides for legislation to give forth to that Article. On Article 35, this is now an innovative Article which is not in our present Constitution on women. This is because as we went around we found that women have been marginalized in this country, they have been discriminated against for a very long time and we provided for women under Article 35 which says that women have the right to equal treatment with men including the right to equal opportunities in political, economic and social activities.

Sub Article 2, women are entitled to be accorded the same dignity of the person as men and one old man stood up in Ndhiwa and told us, we were asking them, ‘why do you advocate for wife-beating?’ They said that women have to be disciplined by their husbands and we asked them, ‘Mzee, who disciplines you?’ He said men are naturally born disciplined. These are the kind of attitudes. I am not advocating for that, that was wrong, that was a very wrong attitude. I can see Mrs. Martha Koome shaking her head. That was wrong. So this Article is meant to protect the rights of women – our daughters, our sisters, our mothers, our grand mothers and all the women of this country.

Then sub Article 4 provides for the abolition of some harmful cultural practices like FGM and other practices that are harmful to the women and discriminate women. And as we talk about women, there is a category of women who told us they are feel that they are doubly marginalized, first as women and two, as women with disabilities and that has been provided for under Article 39 for women with disability.

Article 36 provides for the rights of older members of the society. I remember recently meeting Mrs. Pamela Mboya’s group, that is the Help Age Kenya, and we were reminded that all that all

of us potentially belong to that category of Kenyans who are forgotten. So, Article 36 provides for the rights of the older members of the society, the senior citizens of this country, we are talking of those who have attained the age of sixty years and above. So their rights have been provided for under Article 36, that older members of the society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights including a right to: a) participate fully in the affairs of the society. I can see so many of us who belong to that category and they are still useful members of the society. So they should be given that opportunity. They should also be given the opportunity to pursue their personal development, also be free from all forms of discrimination, exploitation and abuse; live with dignity and respect and the Article goes on explaining and giving those rights to the older members of the society.

Article 37 talks about the rights of children. We are talking of Kenyans below the age of 18. Their rights have been provided for under Article 37 which recognizes that children hold a special place in the society and it is the duty of their parents number one, two; the wider family, three; the society and the State to nurture, protect and educate them so that they can develop in a safe and stable environment, in an atmosphere of happiness, love, respect and understanding. And we do hope that on the enactment of this new Constitution we shall not have children that are referred to as 'chokoras'. These are Kenyans who have rights and their rights have to be taken care of. The State, the community and the society in general have a duty to protect the rights of these children.

On education of these children, of course many Kenyans were telling us, almost to a person, they were advocating for free education and they were differing on up to what level. Is it up to secondary school, up to post secondary school? But what we provided for here is free and compulsory primary education.

Sub Article (e) provides for the protection of children against labour. Then sub Article (f) provides for the basic needs of the children. Sub Article (h) protects the children from being used in armed conflicts like we know in neighbouring countries children have been used in armed conflicts. Sub Article (j) protects children from being detained together with adults. In fact, recently we visited Nairobi West GK Prison and we were surprised to find 16-year-old boys put together with grown-up criminals there and in fact even the officers in-charge were complaining

but they had nothing to do because they didn't have special facilities for the children. So, we provided for here that they should not be detained with grownups.

Article 38 provides for the family as the natural fundamental unit of the society and as the necessary basis of social order. Sub Article 2 here provides for the respect and protection of the family by the State. Sub Article 3, of course we expect to receive a lot of comments on that, every person who attains the age of 18 has the right to marry based upon the free consent of the parties and sub Article 3 (b) every persons who attains the age of 18 has the right to found a family. Sub Article 5, we expect that Parliament shall enact legislation that is in a manner consistent with this Article and the provisions of the Constitution.

Sub Article 39, persons with disability, this is something that does not appear in our current Constitution and what I tell people wherever I go to disseminate this Bill is that Waswahili wanasema, ' Mja haishi kuumbwa maadamu yuko hai'. As long as you are alive, your creation has not stopped because in the morning you could wake up with a full body with both legs, both hands and eyes, you get involved in an accident and you fall into that category. So this is a category that all of us should be very concerned about because we potentially belong there.

Even our president was sworn in on a wheelchair and he didn't know he would be sworn on a wheelchair and a ramp had to be constructed very quickly because all of a sudden we realized as Kenyans, that somebody who is supposed to be at the high table will use a wheelchair. So we quickly constructed a ramp. There has never been a ramp at Uhuru Park since independence. Most of our buildings are not accessible to persons with disabilities, we have totally disregarded them. Believe me in some places that we went, as we tried to pay a courtesy call to the PC in some places some of our colleagues could not access the PC and Kenyans were telling us that 'we don't have access to some of these offices. It's either for the PC to come down or the DC to come down or me to go up and I can't go up and he can't come down so I am denied that right'. Public facilities like buses and other things, we don't have in mind Kenyans who have disabilities and also the language that we use when we refer to persons with disability and the best example is Kiswahili. Somebody might ask what is in a language? But it is very significant the way we refer to people with disability. In Kiswahili we say 'kipofu – vipofu', kiwete-viwete', kiziwi – Viziwi'. My teachers of Kiswahili told me that that belongs to the 'ki-vi' class

used to refer to inanimate things -things that are not living. 'Kiti – viti', 'kiatu – viatu', kiazzi – viazi'. So even the language that we use to refer to persons with disability is abusive and we should look into it and we have provided for that.

The attitude towards persons with disabilities, even parents, we love our children very much but most parents who have a child or two who have disabilities, when visitors or guests come to that house, most likely those guests will not be allowed to see the children with disability. Watafichwa mfunguni, they will be hidden there. So even the/our attitude is that disability is inability, which is very wrong. So, we tried to correct that under Article 39. Persons with disabilities are entitled to enjoy all the rights and freedom set out in this Bill of Rights and to participate as fully in society as they are able and the State shall by legislation and policy take measures to ensure that they have been given their rights in this country.

Special institution under sub Article 2 (c). We provided for institutions. The government or the State should ensure that we have institutions with facilities that can allow these people equal opportunity or persons with disabilities equal opportunity as other persons. The issue of sign language. I am sure that this conference has provided for sign language interpreters but you can imagine if a person with hearing disability wanted to access information through the TV for example KBC, Nation and KTN. How does that person access that information? We don't have them in mind. Our documents, I don't know whether our documents are in Braille, what do we think about that person with visual disability? So, we provided for all that under Article 39. It's a very long Article. And of course we have also provided here for a girl child with disability because she has special needs because of her being a woman and two; having disability. We provided for all that under that Article.

Article 40 provides for human dignity. Article 41, freedom and security of the person, which says that everyone has the right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause. We just need to go to some parts of this country and know how much this has been abused. Just go to North Eastern Province and I was unfortunate because the vehicle that I had been given by the Commission happens to be a GK and it is green in colour. And believe me, in most places I would stop in a place like

Shantava or Habasuen and especially the women folk would take off, they are always afraid of any green four-wheel vehicle that is a GK. They don't feel protected, they are not protected.

Article 42 provides for protection from slavery, servitude and forced labour. Article 43 privacy, again you just need to go to some of these parts of these marginalized parts of Kenya and listen to what Kenyans tell you there and you will know how much their privacy has been abused. You just need to say you are a chief or a police officer and then you have the right to go to the bedrooms of people and do whatever you want there even without just cause. So, this has been provided for under Article 43.

Article 44, freedom of religion, belief and opinion. Of course, Kenyans, while submitting to us on this issue, were very concerned some religions that they felt have to be checked. For example, they are talking about devil worship. 'You are providing for freedom of worship, what about things like devil worship?' So, we provided for freedom of worship not only for Kenyans who are free but even for Kenyans who are in custody like in prisons because we also realized that this right has been abused in prison or when people are in custody their religious rights are abused. And of course the like the SDA people told us that they would like Saturday to be a public holiday because it's a prayer day for the SDA, the Muslims were saying Friday and we realized that if we provided for all these then we would have may be only two or three working days in Kenya. But these are some of the submissions that we received pertaining to religion.

Freedom of expression is provided for under Article 45. Freedom of publication of opinion under Article 46 and that is where we also have the issue of liberalization of the airwaves. Kenyans were very concerned about that. Article 47, access to information, and you will be surprised that there are parts of this country that do not know what KBC is. In fact we, as a Commission, were trying may be to send information to them and we realized that in some parts of this country you cannot even tune to KBC. You would rather tune to radio Mogadishu or BBC Somali language but not KBC. So they don't have access to information. Kenyans were very concerned, I remember in one venue in Pokot, they are asking us, 'what is the difference between you and the many other Commissions that have visited us? In fact we don't trust any black man. When we saw this helicopter we thought that some white people were coming in with this helicopter because we don't trust people or Africans any more. In fact we would rather the Mzungu comes

back because you people send Commissions to come and collect information from us but after that we don't know what comes of this information or this report'. So they were very concerned about information that is held by the State and is not made public to them. So that has been provided for under Article 47 as a basic right.

Article 49 provides for the right to assembly, demonstration and picketing, every person has the right to visibly and unarmed without the requirement of prior permission to assemble, demonstrate, to picket and to present petitions to public authority. Article 50 provides for political rights whereby every citizen is free to make political choices which include the right to form or participate in forming a political party, of course later on in In Sub Article (b), every citizen has the right to participate in the activities of or recruit members for a political party, (c) to campaign for a political party; of course every citizen has a right to free, fair and regular elections. In some parts of Kenya we have something that is very astonishing. Some married women were told by their husbands, 'ukimpigia kura candidate fulani ambaye simuungi mkono, nimekupatia talaka, I have divorced you if I discover that'. Of course, we were telling them 'no' that is her right to make her political choice. So every person has that right provided for under this Article.

Freedom of movement, yesterday as Honourable Delegate Wario Ali from Tana River was raising the issue of 'uhuru wa wanyama kutembea tembea', I wanted to tell him hold on Mheshimiwa, this will be addressed under Chapter five. Freedom of movement and residence; this provides that every person has the right to freedom of movement, every person has the right to leave the Republic, every citizen has the right to enter into and remain and reside anywhere in the Republic. I'm being reminded that I am being too slow and too detailed, so I will try to rush. Okay, is the pace okay?

Hon.Delegates: Yes.

Hon. Com. Lethome: Haya mwendo wa pole kama kinyonga, tuendeleo.

Hon. Delegate Mwangi: You will continue after lunch. Just four minutes, we adjourn and then you will continue after lunch.

Hon. Com. Ibrahim Lethome: Four more minutes, eh?

Hon. Delegate Mwangi: Yes.

Hon. Com. Ibrahim Lethome: Okay, I have four more minutes and then we break for lunch. So, talking about freedom of movement and the freedom to settle anywhere in Kenya, let me tell you what we heard from Kenyans; extreme views about the issue of residing anywhere in Kenya. Somebody stood up and said, ‘when God created this country and created regions, He gave certain regions to certain people. So we don’t see why people who don’t belong to that region can come and settle here. I don’t want to name the particular region. But what we are saying here is that every Kenyan has the right to reside anywhere in this country as long as you are doing it within the law in this country. That has been provided for *kwa hivyo hakuna ile mambo ya kuambia mtu wewe si mtu wa hapa kwa hivyo enda kwenu*, no. You can reside anywhere in this country and if anybody tells you to move away from this place you can invoke that particular sub section in the Constitution.

Sub Article 52 provides for the rights of the refugees and asylum seekers in the country because I think we don’t have a comprehensive law in this country for refugees and as we went around for example, in a place like Daadab, we heard complaints from the locals. What they were saying is that the ‘government has decided to settle these refugees in this part of the country which in fact cannot support even the local population’. So, you can imagine a place that can only support 20,000 people with a hundred thousand refugees settled in that area. You can imagine the kind of environmental degradation that occurs in that place. And also these people have a right, the refugees have a right and the locals also have a right. So we provided for that right under Article 52 whereby we said the right of asylum is recognized and shall be granted in accordance with the provisions of the Constitution. A person who has sought refuge in Kenya has a right not to be returned or taken to another country if that person has a well founded fear of persecution in that other country or of other treatment which would justify that person being regarded as a refugee.

And sub Article 3 here requires that within one year, because one thing that you realize in this Draft Constitution that is not provided for in the current Constitution, there is no requirement that

parliament enacts law to make sure that the rights provided for have been implemented. But in the Draft Bill, parliament is required to enact laws to enforce or to give effect to the Articles to the Bill of Rights. So, within one year of the coming into force of this Constitution, Parliament is expected to enact a law in compliance with international law and practice governing persons who seek refuge or asylum in Kenya.

I think the last Article that I took you through was Article 53, that is freedom of trade, occupation, and profession, and now we go to Article 54 on property. I think all of us know that it is an inherent --- it is natural to own property, it is natural to desire to own property. And in fact all of my teachers told me, one of the reasons why communism was bound to fail was because it denied that basic right of an individual to own property. And even a small child, you just need to experiment with a small child. Buy your two year old child a toy and tell that child that this is your toy, and then the next day let another child try and snatch that toy away from that child, and there will be a fight: because it is inherent in human being to own something. So this right has been recognized under the Bill of Rights and it is provided for under Article 54 - that every person has the right to acquire and own property. You can own this property as an individual or in association with other people.

Parliament is required under Sub Article 2 to enact laws that will not deny that right. Of course we had a lot of complaints from people as we went around collecting views on arbitrary compulsory acquisition of private property by the State without proper compensation. So if property is a basic right then we should have appropriate laws to protect that right, and one should not be deprived of that right without proper procedure or mechanism followed. But of course the Constitution recognizes that the right to own property, private property is limited to property that has been legally acquired. So if you have a piece of land, if you have may be grabbed a piece of a stadium somewhere, then you cannot invoke that part of the Constitution and say: I want my right to own this property protected. It only refers to property that been legally acquired and that is provided for under Sub Article 3, 1 and 2.

Article 55 provides for the rights of not only workers but also employers; because sometimes we tend to look at the rights of workers and protect them, and we forget that even the employers have rights and their rights have to be provided for also. So under Article 55 Sub Article 1, we

provided for the rights of workers. Everyone has the right to fair labour practices, every worker has the right to, (a) a fair remuneration (b) reasonable working conditions (c) form, join or participate in activities and programs of a trade union. You look at Sub Article 1(b) reasonable working conditions. You just need to wake up early in the morning and stand outside the streets of Nairobi, and especially during the rainy season like now: you will be surprised at the number of Kenyan workers who travel under very deplorable conditions to work. A tipper lorry which is supposed to be used for carrying stones or sand, you find 100, may be about 20 workers standing in that lorry, and because it is raining they use a polythene paper may be to cover their heads, and when you go to the employer he will tell you, I am providing transport to my workers as required by law. That is transport meant for sand and stones not for human beings. So we are talking of such rights here.

Then under Sub Article C the right to join trade unions, we got a lot of submissions from the disciplined forces. We know under our current laws, the Police, the Armed Forces, and other disciplined forces, members of these forces are not allowed to join trade unions. So if they have any complaint pertaining to their working conditions, they have no where to go. They cannot go to trade unions. And they submitted and appealed to us that under the New Constitution, they should also be allowed to join trade unions.

So Sub Article 3 provides for the right of employers. Every employer has the right to form and join an employers' organization like we have today in Kenya, FKE – Federation of Kenya Employers. (b) participate in the activities and programs of an employers' organization. Every trade union and every employers' organization has the right to (a) determine its own administration programs and activities (b) organize and (c) form and join a federation. Sub Article 5 every trade union, employers' organization, and employer has the right to engage in collective bargaining.

Sub Article 56 provides for Kenyans who are not able to provide for themselves or their dependants, and places a responsibility or duty on the state to provide for such people. And we are not talking about a State of beggars whereby everybody is looking up at the State to provide for his or her needs. But we are talking about those who are not able to meet their needs, then it is the duty of the state to make sure that everybody is provided for. Every person has the right to

social security, including if they are unable to support themselves and their dependants, appropriate social security assistance by the State. What we are saying is that nobody should die of need. Nobody should lack basic needs because he or she is unable to provide for himself or her self or his or her dependants.

Health : almost every Kenyan in this country made a submission on this issue of health. Of course they were talking about the high cost of getting health care or health services. They were talking of free health care, but what we ended up with in our Constitution is provided for, or in the Draft Bill is provided for under Article 57 - every person has the right to health which includes the right to health care services, including reproductive health care. Sub Article 2, no person may be refused emergency medical treatment. What Kenyans were telling us is this: if let us say you are poor and you have an emergency medical case, you might die before you are attended to, because if let us say that you go to a private hospital and even some Government institution, the first thing you will be asked for is to have some deposit. Can you deposit a certain amount of money before we can attend to you. We know of cases where people have lost their lives because they could not afford to pay a deposit to be attended to, even in cases of emergency. So we provided for that under Sub Article 2.

Article 58 education as a basic need. Every person has a right to a basic education including pre-primary, primary and secondary education. The Government shall institute a programme to implement the right of every child to free and compulsory primary education, because we know, that has been implemented but Kenyans were very concerned about the issue of education, the high cost of education. Sub Article 3: the State through reasonable measures shall make progressively available and accessible post-secondary school education, and every person has the right to establish and maintain, we are talking now about private institutions, at their own expense, independent educational institutions that meet standards laid down in legislation and comply with the requirements of the Constitution. Of course Kenyans varied in their views about free education, some of them were saying it should be from nursery school to university and even beyond may be. Some were saying up to secondary education, some were saying primary education. So this what we ended up with in the draft bill.

And the question of housing of course this is a major, major concern especially in the cities like Nairobi and other big towns in Kenya: where we find that some people don't have a roof over their heads. So what we have provided for under Article 59 is that every person has the right to have access to adequate housing, that is reasonable housing that is fit for a human being to live in. Two, no person may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. Sub Article 3 requires that Parliament shall not enact any laws that authorizes or permits arbitrary eviction.

Sub Article 60 on food: in some parts of this country that we visited you will not believe that Kenyans go without food for days on end. In some parts of this country, in fact we realized that sometimes human beings have to struggle with all the animals for the limited resources in terms of food and water. I don't know whether some of you read in the papers sometimes in the mid 90s of a place called Takaba whereby, baboons which are called by the Somalis 'Daniele', fought with human beings over water, because there was only one source of water and the level was dwindling. So the baboons and human being were fighting over that water. And recently it was in the press again in Isiolo, some place back in Isiolo, the people from Isiolo may be correct me, whereby baboons again injured a young girl who was carrying a pot of water, because the baboons wanted the water also and they injured the girl because the only source of water was not enough for both animals and human beings. So this is how Kenyans are.

And in fact we went to Embu no Nyeri and one lady, an old lady with a child was called forward to give her views, she was told this is a Commission that has come all the way from Nairobi, what do you have to say? These people are collecting views so that they can come up with the new Constitution. She just said in a very simple way in Kikuyu language, 'ndirenda irio cia mwana' – I want food for my child. You know it is a concern. To her a Constitution is useless without providing food for her. Again we are not talking about a State of beggars, but the Government or the State should be able to facilitate and make sure that nobody dies of hunger in this country. Nobody dies of lack of water. So that has been provided for under article 60. Everyone has the right to be free from hunger and to have access to food in adequate quantities and of adequate quality and cultural acceptability. Why cultural acceptability? If today you told a Muslim that okay you are hungry I am going to supply you with pork for example. That is not food that is acceptable to that person or a Hindu I am going to supply you with beef, that is not

culturally acceptable to that person. So when you talk about food it has to be food that is acceptable.

Water, everyone has the right - that is Article 61, everyone has the right to water in adequate quantities and of satisfactory quality. You just need to go to the Northern part of Kenya and even parts you will not believe it, honourable Delegates. Even some parts that are very close to Lake Victoria people are suffering because of lack of water, because I understand, there is an agreement that does not allow Kenyans to use the waters of Lake Victoria for irrigation. I went to Homa Bay, some parts of Homa Bay some parts of Mbita, where people were suffering for lack of water yet Lake Victoria is just a kilometer away or a few meters away from their door steps. This is how the situation is.

Article 62 provides for sanitation as a basic right everyone has the right to reasonable standards of sanitation including the ability to dispose off the bodies of the dead with decency.

On the environment Kenyans were also very concerned about the environment. In some parts of this country we realize that nuclear waste has been dumped there, and people and animals, livestock and human are suffering because of dumping of nuclear waste. Some parts of North Eastern Province, wells were polluted because of the dumping of nuclear waste. So under article 63 everyone has the right to an environment that is safe for life and health. You just need to go to Kisauni near Bamburi Cement factory, and then you realize the number of people suffering from Asthma because of the dust coming from the cement factory. My sister is reminding me of Webuye. You will just need to go to areas where we have tanneries, and then you realize what Kenyans are going through. Sub Article B everyone has the right to have their environment protected for the benefit of the present and future generations through reasonable legislative and other measures.

The next Article : every person has the right to prevent pollution and ecological degradation. Number two, every person has the right to promote, conservation, and secure ecologically sustainable development and use of natural resources while promoting economic and social development. We have another Chapter on environment and I am sure this will be highlighted

but this is a basic right, and it is the right of every Kenyan to make sure that we are living under a safe and conducive environment.

Article 63 (a) on language and culture: everyone has the right to use the language and to exercise his right. For one who wants to exercise this right may do so in a manner consistent – this is not clear – sorry, I am reading a copy that has not been edited so it has some problems – but what the article provides for here is that every person has the right to use their language and promote it. So the State should provide for the development of these languages. We went to an Island in Mbita, and we found that the people of Mbita now those who speak Suba language are really working hard to bring up their language, use it to teach in schools, and also their culture is growing up. But persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community, to enjoy their culture practice, their religion, and use their language - as long as, of course they do not interfere or may be impose their culture on other people.

There is a place that I had to visit in August last year and Commissioners who belong to a certain community were not able to access that area of Kenya in August last year because they feared the people of that area would impose their culture on them. I am talking of Bungoma but I will not talk the people who did not want to go there in August. (laughter and cheering) So Sub Article 4 under that Article provides for that: no person may be compelled indicate or define his or her ethnic, racial affiliation.

Article 64 talks of consumer rights - that consumers should be protected. And the example I like giving when I am disseminating this is the example of chemicals or beauty products that we use - our sisters, our mothers, our daughters like using. Suppose some of these chemicals or these beauty products are harmful to them, do we have a remedy? Do they have a remedy? Isn't it their basic right to be protected and don't you think may be the manufacturers sometimes mislead the consumers. For example: just look at the adverts on cigarettes, that if you want to be a very good sports person, you need to smoke Sportsman or Embassy, smooth all the way. Is it not misleading? That is misleading and I think it is a basic right for consumers to be protected against such misleading advertisements.

So what we have provided for under Article 64 is that consumers have a right to goods and services of appropriate quality. (b) the information necessary for them to gain full benefits from the goods and services. If cigarette smoking is harmful, let BAT put it very clearly in bold writing, 'you smoke at your own risk'. That is better, that is not misleading. But when you write, Sportsman, in very bold print and then the warning is so small you have to strain to see it, I think that is misleading. So this is what Kenyans were telling us.

Consumers also have the right for compensation or to compensation for defects that cause loss or injury. For example: if I want to look sweet 16 and there is a beauty product that has been advertised that if you use this one you will look sweet 16, I use it, I end up having madoadoa kama kanga where do I go for remedy? Ama I feel that my hair is turning grey ama I am balding. I go and buy a product I apply it, nywele yote inaanguka chini, where do I go to, especially the sisters are really affected by this. So we are providing for compensation for defects that cause them a loss or injury. Those who offer services shall endeavour to consult consumers and consumer organizations in connection with issues that affect them.

Sub Article 4 of that Article provides that an Act of Parliament shall provide for consumer protection, and for fair, and honest, and decent advertising. In fact some adverts on TV are so indecent you can't watch them with your daughter. Just look at the advert on Trust condoms. You can't sit there with your daughter and watch that advert. You know, you will end up switching off the TV, *unawaambia zimeni hiyo, hiyo si ya watoto kuangalia*. We want a control on advert, they should be decent and honest. Yeah, *mbaya sana, hata mzee anasema mbaya sana*. Parliament shall enact legislation to give effect to the rights in Clause one and two and such legislation shall provide for the review of administrative action by a court or where appropriate, an independent and impartial tribunal, and promote an efficient administration.

Article 65, we received a lot of complaints about administration. In fact in some areas people did not want even to see their chiefs. They thought that they had come to disrupt their meetings. And in fact in some areas, they told us that to them when a chief dies, they celebrate, because these are people who oppress them. Unfair administration, *tena anakuuliza wewe ndio uliniweka hapa? Angalia kirauni hapa utanipeleka wapi, kwenda mahali unataka*. You know that type of language. Ama forcing them to contribute to harambees without receipts being issued. So there

were a lot of complaints about administration so Article 65 provides for fair administration. Every person has the right to administrative action that is expeditious, no undue delay and it is happening everyday. Then also protected against unlawful, unreasonable, and unprocedural administrative actions. So every person whose rights have been adversely affected by administrative actions has the right to be given written reasons for the action. But today as it is if let us say you have a complaint against an administrator, where do you go to complain? *Utaambiwa nenda mahali unataka, hukuniweka hapa na huwezi kunitoa.* That is the language that is being used but we provided for here an opening or an avenue through which an aggrieved person can complain and get redress. Sub Article 3 requires that Parliament enact laws to ensure that this is given effect.

Rights not to obey unlawful instructions – my late father used to tell me that he used to be a soldier with the Kings African Rifles (KAR) and the orders were that if you are ordered to shoot, you shoot first and then you question it. Whether it is lawful or unlawful you obey first and then question. I don't know whether it is still happening with our disciplined forces to date, but we provided for that, that you are not under any obligation to obey unlawful orders. Every person has the right not to obey unlawful instructions, and no person is liable to punishment under any law for disobeying unlawful instruction. I know we shall have a problem implementing that because of our history but that is what we have provided for.

Article 67: access to courts – Kenyans were telling us that sometimes even when they have a problem or they need justice to be administered, sometimes they end up forfeiting their rights because courts are not accessible. Either because they are very far away from them or because of the requirements for you to access the courts, and it is also expensive for you to access justice. So Article 67 provides for that every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate and other independent and impartial tribunal or forum. That is a basic right.

Rights of arrested persons: you know in Kenya we tend to ignore the fact that a person is innocent until proved guilty. In Kenya it is the other way round a person is guilty until he proves himself or herself innocent. That is why you find that rights of arrested persons have been trampled on. It is like they cease to be human beings, they cease to have those rights. If let us

say you meet a police officer with an arrested person and he is slapping or even using a rungu to clobber that man, you say after all he has been arrested. We tend to forget that whether arrested or not that person still has rights, and the rights should be protected. That one has been provided for under Article 68. Every person who is arrested for allegedly committing an offence has the right to remain silent, we only see this in movies, with America - the police officers in America the way they behave they tell people you have the right to remain silent. In Kenya they wouldn't tell you that. The right to be informed properly in the language they understand, they also have the right to be told of their right to remain silent, and of the consequences of not remaining silent, so their rights have been enumerated there.

In Sub Article (d) every person has the right to be held separately from persons who are serving sentences, so those who have been convicted should not be mixed with those people who have not yet been convicted. It is the right of every person who has been arrested to be brought before a court as soon as reasonably possible, and not later than 48 hours after being arrested. We know of cases whereby people are held without being taken to court for weeks or even months. And it should not be later than the end of the first court day after the expiry of 48 hours - if the 48 hours expire outside ordinary court hours or on a day that is not an ordinary court day.

Then Sub Article 2 : no person may be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment of not more than 6 months. I am sure all of you have heard of the complaint that our prisons are overcrowded and that is an understatement. You just need to visit the prisons and then you realize how deplorable the conditions are there. I went to GK Prison, Nairobi West, and we were shown prisoners who were stark naked and they had to use blankets to cover themselves and appear before us. And the officer in charge told us what do I do? This place is meant for about 60 prisoners, I have 400 and I have only been supplied with uniform for about 100, what do I do, and they cannot have their clothing. So what we are saying is that if we can reduce that overcrowding, by not committing everybody to prison, that has been provided for and that is Sub Article 2.

Fair trial, of course there were a lot of complaints about unfair trial in Kenya, so that has been provided for under Article 69. Every accused person has the right to a fair trial which includes: the right to be presumed innocent until proved guilty. (b) to be informed of the charge with

sufficient detail to answer it. (c) to have adequate time and facilities to prepare defense. Again going back to the prisons, the officer in charge told us that half of the inmates there were convicted because they didn't know what was happening in court, and some of them even admitted to the charges without knowing that they were admitting.

Sub Article D every person, accused person has the right to a public trial before an ordinary court or tribunal, and to have the trial begin and conclude without unreasonable delay, (f) to be present when being tried, (g) to choose and be represented by an advocate and to be informed of this right promptly. It is also the right of every accused person to have an advocate assigned to him or her by the State and at State's expenses. We know many Kenyans cannot afford the services of lawyers, so it is upon the state to provide such people with legal service. The Article is long, I don't want to go through the whole of it, I just want to capture the principles.

Then Article 70 : rights of persons held in custody ; just like the arrested persons' rights have been trampled on, the right of persons in custody have also been trampled on. We forget that even those inmates in prison are human beings they are Kenyans and they are entitled to their rights. Persons who are held in custody under the law, whether sentenced or not, retain all their fundamental rights under the Constitution except to the extent that a right is clearly incompatible with the part of being in custody. So they have all the rights that we have been talking about, right to food, right to water, right to other basic needs, they still retain those rights. In fact there is a clause, a Sub Article that we have included here that every prisoner was happy about, especially the male prisoners were very happy about Sub Clause 2(g). The persons who are held in custody have the right to communicate with their lawyers, number one, with other persons whose assistance is necessary, to their religious advisers, and close to family including their spouses. What they were saying is that if let us say a man is in prison, he should be, the Government or the State should facilitate that prisons have facilities that allow inmates to be visited by their spouses, and the inmates were very happy about this. (laughter)

The right to privacy has been provided for under Sub-Article 2(h). Sub Article 3: the State shall ensure that prison systems, so far as it relates to convicted prisoners observe the minimum standard laid under relevant international law and international standards.

Then Sub Article 71 talks about the declaration of the state of emergency. How can it be declared? Sub Article (1), a state of emergency may be declared only in accordance with Article 151, and only when the republic is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency.

Then over to article 72, the application of the Bill of Rights – who does it bind? And the article provides that the Bill of Rights applies to the interpretation of all laws and binds Parliament, the Executive and Judiciary, and then all organs and agencies of the state and all persons. A person enjoys the benefit of any right or freedom in the Bill of Rights to the greatest extent possible given the nature of the right.

Article 73 provides that every person has the right to ask the Commission on Human Rights and Administrative Justice or court to uphold the Bill of Rights. These persons have been enumerated under sub-article 1(a) – all those people who have been enumerated there have the right to appear before a court of law, or before the Commission on Human Rights and Administrative Justice, and invoke any article under the Bill of Rights. So a person acting in his/her own capacity can rise up and go to court and invoke sections of this article or a person acting on behalf of another person who cannot act on their name, for example an adult acting as a friend to an infant - a person who doesn't the capacity; or a person acting as a member of, or in the interest of a group, or class or persons, so as a member of the Okiek I can invoke any part of this Bill of Rights on behalf of my community. A person asking in the public interest, being an association acting in the interest of its members.

Then sub-article 2 provides for the procedure – how do you go about invoking articles and the Bill of Rights? If a person complains to the Commission on Human Rights and Administrative Justice, the commission shall first investigate to establish whether it's a genuine complaint or not, (b) provide appropriate redress where human rights have been violated.

Then sub-article 3, the Chief Justice shall within one year of the coming into operation of this constitution make rules providing for court proceedings contemplated under sub-clause 1, and those through shall satisfy the following criteria; the criteria is enumerated under sub-article 1(a), (b), (c), and (d), (e).

Article 74 - I'm just coming to the end now - the authority of the court to uphold and enforce the Bill of Rights. The High Court has been given the jurisdiction.

Then Parliament under sub-article 2 shall enact legislation to give original jurisdiction in appropriate cases to lower courts; so it's not only the High Court that has jurisdiction over these matters of Human Rights but also lower courts in accordance with an Act of Parliament.

Sub-article 3 in any matter brought before it, that is the court, in terms of article 73, a court may grant appropriate relief which may include a declaration of rights, (b) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of article 31, that is a limitation. But it said, "these rights provided for here can only be limited by law and they have to be justifiable and reasonable."

An order of compensation can also be granted against the state or any person responsible for the violation of rights, so the people of North Eastern Province can take the state to task by going to court and saying, nuclear weapons dumped in our region, it affected us, so we want compensation from the state. (d) Normal orders of judicial review.

Article 75 is on the interpretation of the Bill, I don't need to go into that and in the interest of time, I beg to stop. Thank you. **Clapping.**

Com. Nancy Baraza: Thank you, Mr. Chairman, for your indulgence. I think my friend has alluded to provisions in the Act about the Provision or the availability of basic needs. And we've got comments from the public that probably we were too ambitious and we are providing for rights which may not be realizable; but what we would like to state as a commission is that the draft is asking the State to put in place policy and legislative measures that will enable Kenyans to realize their basic needs. And of course my friend talked about where, in extreme cases, people can grow but they cannot afford to provide for themselves, then that is a matter which a court can rule that the country or the state need to meet.

Otherwise what we are saying is, Kenyans have not been asking for handouts; they are saying 'give us facilities, give us roads, and I'm sure most of you come from places where you know there are no roads at all. I remember as we went around the country, some places have no bridges, so we were chancing, thank God we had those infamous Patrols but they took us to places where we would never reached, because you plunge through a river and there are no bridges. And people need to travel, market their produce and they cannot, so they are asking give them roads, give them bridges, give them markets where they can sell their produce. Those are the kind of facilities they are asking for. If they are able to do that, then they will be able to meet their basic needs. So all they are asking you is sufficient policy and legislative measures from the government to help them realize their basic needs.

Hon. Delegate Yusuf Haji: Honourable Delegates I want to share one thing with you, and also assure you, whenever Provincial Administration is mentioned, there are some friends here who are poking their fingers at me. *(laughter)* I want to assure them that I am a changed man after six years in politics; so I will try to be as fair as possible, with your cooperation. Now the sitting arrangement here is very very elaborate, and very good indeed. We have eight distinct sitting arrangements starting from here and ending this side. The way I want to proceed is, to allow one person from here, then here, up to the end, then go back, and continue that way. But already, we have been short-circuited by those who had given us chips - *(noise)* just listen, just listen - and on going through, out of thirteen, who have given us chips - one, two, three, four, five, six, seven, up to that end, up to thirteen. And then, after the thirteen again, three come from another area, and then another three come from the same area, and then we have one from one area. I want your permission, do you want? *(noises)* just a minute, I will give you. I wanted your permission to be allowed to continue with the arrangement which I have told you earlier, or do I start with these ones?

Hon. Delegates Delegates: Earlier.

Hon. Delegate Yusuf Haji: Earlier, okay. Now I will allow a point of order, one point, before I allow a point of order please, there is a point of procedure by Delegate number 613. Can we allow him please? And then I will take the point of order, very few of them.

Hon. Delegate Mike Oliewo: Thank you very much Mr. Chairman, my name is Oliewo Mike, Delegate No. 613. I'm very encouraged by the wisdom of the message you have just delivered right now, because my concern was on how presentations from the floor are selected. Some sectors of this Conference felt marginalized and I was suggesting that if you take presentations from the floor, you concentrate on the different sectors that are here and since you have chosen to go by the sitting arrangement, is all very fair for me; so my point already has been taken care of. Thank you very much.

Hon. Delegate Yusuf Haji: Thank you very much indeed.

There was somebody who was rising on a point of order? 252? And please let it be point of order.

Hon. Delegate Dubat Ali Amey : Mr. Chairman, my point of order is similar to that but a little bit different. We have gone through the five chapters and there were people who have already spoken yesterday,

Hon. Delegate Yusuf Haji: Well, well.

Hon. Delegate Dubat Ali Amey: We would like some modalities to be drawn so that every Delegate has the right to speak, we are not coming here for holiday, Mr. Chairman!

Hon. Delegate Yussuf Haji : Well, I think it is not practicable really, we have no record of those who spoke yesterday and the other day, and in any case they were speaking on different chapters. So please let us proceed. So, I will allow now 99. Is it a point of order or what? If it is presentation or comments, please sit down. Please.

Hon. Delegate Mganga Boniface: It's a point of order, Mr. Chairman. Mr. Chairman, I rise on a point of order with regard to regulation 332 which states: "any Delegate shall address his observations to the chairperson and refer to any other Delegate as the Honourable Delegate". Regulation 342 goes further to say: "it shall be out of order to use offensive or insulting language in reference to any other Delegate or officials of the Conference".

It started yesterday Mr. Chairman, when the Conference was almost getting out of hand and unpalatable language started flying across. This morning, we heard all of us with our own ears, when a honourable Delegate referred to another Delegate, namely Mirugi, as a mad man. What I'm saying, Mr. Chairman, we came here with open minds, to listen to each other, it does not matter how much I don't like what you are saying, we should respond and put across our case with decorum and in a civil manner. I am requesting, Mr. Chairman, that all Delegates be cautioned, and whoever refers to another person as such, be asked to withdraw that remark and apologize to the offended member. Thank you, Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much, point taken. Now I think we should proceed please. I will start on this side and I will recognize 487.

Hon. Delegate Baldip Singh Rihal: Thank you very much, Mr. Chairman. Honourable Delegates, my name is Baldip Singh Rihal, I am Delegate No. 487 from the Professional Organizations. Mr. Chairman, I would like to commend the Commissioners for putting out an excellent draft on the Bill of Rights. It is one of the longest chapters in the whole Draft Bill and it contains a lot of important and cardinal principles on which the whole pieces of this Conference and the ultimate constitution that will be written for Kenya is based on.

Now, obviously and towards the end, the lady speaker concluded her remarks by saying that it will depend upon the state how much resources they will be able to allocate towards providing for all the different needs that have been written down in the Bill of Rights. We know how the resources of this country are being or were being distributed, but when we come to discuss Chapter 13, we want to make sure, Mr. Chairman, and I appeal to all Delegates, that when it comes to the question of allocation of resources, which is under Chapter 13, we want to tie up things there to meet the needs and the aspirations of Kenyans particularly those who live in very poor areas and live under very difficult and deplorable conditions.

Mr. Chairman, I have one or two other comments at this stage I would like to make, and it comes and even arises from the remarks just made by the previous speaker who was making a point of order and my comment is concerning the right on freedom from discrimination. Mr. Chairman, I would like to appeal to this Conference that we extend this Chapter or this particular section

and call it “freedom from discrimination and insulting remarks”. Why I am saying this Mr. Chairman is, and this is part of the history, why people like me are here in this part of the world. I am not here by design but I am here by an accident. My grandfather came to this country more than 100 years ago; like the parents and grandfathers of I’m sure many other honourable Delegates who are here. I was born in this country more than 66 years ago, I went into public service at a very young age and I was sent to university by the colonial government just before Kenya was becoming independent, and I became a citizen of Kenya and my number is 139, within one month of independence of Kenya. And I resent the remark recently made there by another honourable Delegate that we should not allow paper citizens to participate in this Conference. *Clapping.* I am not a paper citizen, Mr. Chairman; I have contributed my life towards the development of this country and I’m still continuing doing it. I know no other country in this world and I will live here until God takes me away. *Clapping.* So anybody who wants to call me a paper citizen, I think it is very unfair and a very derogatory remark. (noises)

Hon. Delegate Yusuf Haji: No! endelea, endelea.

Hon. Delegate Baldip Singh Rahal: I therefore want to appeal to all Delegates from all different sections and from all different communities, let us be tolerant of each other, let us accept divergent views but let us not insult each other. Therefore, Mr. Chairman, that is my one plea that we should consider.

My other plea Mr. Chairman is, that there is not adequate provision made in the Bill of Rights for the rights of the elderly people. We have talked a lot about the children, we have talked about the women, but I think the elderly people also need adequate taking care of and we should provide more particularly where one section says a person should plan for his retirement. How does a person living in a village in a remote part of Kenya with no resources, who has never worked in the public service or has had no steady income, how does he plan to retire? We would like to have little more explanation on that. I think I will leave it for that Mr. Chairman. Thank you.

Hon. Delegate Yusuf Haji: Thank you very much. I want to recognize 361.

Hon. Delegate William Salaon Ole Yiaile: Thank you Mr. Chairman, my name is William Ole Yiaile from Narok District, a Delegate. Before I say what I wanted to say, first I will have to support the speaker who has just spoken, that we are here as equal citizens; that we must be prepared to recognize the rights of others; that the constitution that we are going to write here should be a constitution that will give our children's children, including ourselves, the right to live in a nation with freedom and equality without segregation of any kind.

Mr. Chairman, I want to speak on Chapter 5, 29 6(s) – that we should create a chapter to include a clause that shall recognize the pastoralism way of life; because as we understand, we have got pastoralism in this nation and the pastoralist's way of life has never been recognized by the present constitution. And it should also appear as a human right because it is a way of life and it must be recognized by the constitution.

I will also plead that we create another section in (g), the Affirmative Action – that is for the protection of the marginalized people, the people that have not even been recognized and yet they have been living in this country for many years; and that their resources and their land be protected by the constitution because a constitution that does not protect the rights of those oppressed and the minorities, actually Mr. Chairman with all due respect, shall not even deserve to be called a constitution. We have reached a time in the development of this nation where we must come up with a system, that we shall recognize not only the majority but also the minority. There is a time, justice cannot be done by numbers, and we have seen that the numbers have been used to send some other people to the periphery and to finish off some other people and time now has come that the constitution must protect those people. Numbers are no representatives.

Article 32, 1 - I would like that life be recognized from conception and therefore we add at the end there, "from conception henceforth", so that we don't say those words just by saying, but they should appear in the constitution. That life is recognized from the time of conception henceforth until the day that God shall recall life because only God has the right to recall one's life.

34, 1 – That word sex there should actually be removed because it can be misused and replace it with the word “gender”, because sex can be translated to mean other bad things and can be misused and mistranslated. So when we use the word gender, I think that one will be much more better.

The same section 34, 3(b) – That one should be scrapped. If you look at it carefully, it is actually trying to deny the people what has been created in (a). And I believe that section actually should be scrapped.

Article 60 - we should also insert the word “religious” alongside the cultural. You know when you are giving the people food, I think somebody quoted the Islamic faith, the Islam do not eat pork, not because it is a cultural law but it’s a religious law. So we must include the word ‘religion’.

Bwana Chairman as I finish, there are some advertisements actually that should also be removed and I do agree with the spirit of this constitution. All of you have been seeing in the media (I am sitting down Mr. Chairman). A Maasai running with a lesa and that--

Hon. Delegate Yusuf Haji: Please, please, please, obey, obey.

Hon. Delegate William Salaon Ole Yiaile: Asante, okay, thank you.

Honourable Delegate Yusuf Haji: 300, a lady there.

Hon. Delegate Lydia Wambui Muriuki: Thank you very much Chair. My contribution is ... my name is Lydia Wambui Muriuki from Nyandarua District – District Delegate. I want to draw your attention to Chapter 3, 14, 12, okay, just a minute, Sorry, let me come to the point, I’m lost a bit, sorry, let me come to the point. I’m in Chapter ... Article 5 yes, Chapter 5

Hon. Delegate Yusuf Haji: If you want we can come back to you later?

Hon. Delegate Lydia Wambui Muriuki : Please no, *laughter*. Page No. 9, 3. Every person who is at least 18 years has the right to marry based upon the free consent of the parties but, but must be male and female. I wanted to point that out. And then, on 39 – persons with disability – The state shall ensure that persons with disability are entitled to enjoy all the rights, bla bla bla. And then on the next page 10(g) – Shall ensure for the participation and representation of disabled persons in decision-making at all levels and so on. I have something else before I sit down; on health - I also wanted the state to ensure that every person has the right to health which includes the right to health service and includes reproductive health and all health facilities are well stocked with medication because there is no point of giving us health services and giving us reproductive healthcare and we don't even have the medication; and that's what is happening to us down there.

The other issue is on page 13, right at the top too: “the government shall institute a programme to implement the right for every children including children with disabilities to free and compulsory primary education”.

On food, which is also very essential, the state shall ensure that everyone has the right to be free from hunger and to have access to food. Some of us come from places which are abit arid but there is a lot of land there, if only there was water, I'm sure we would never need the handouts that have been given by the government.

The other issue is water, still, that the state shall ensure that everyone has the right to water. I wanted to pin down the state on those three very essential issues. Thank you.

Hon. Delegate Yusuf Haji: I recognize number 94 please.

Hon. Delegate Maoka Richard Maore: Thank you Mr. Chairman. My names are Maore Maoka, Delegate No. 94. I would like only to mention three clauses that need closer scrutiny before we leave this honourable place at the end of the sessions of our sittings.

Clause 68 talks a lot like an item that has just been downloaded from the American Judicial system of which they call it the Meranda Law. Now for those of us who live in Kenya, we know

the kind of robbers and the kind of criminals we deal with. It is good that we don't just transplant something direct from the United States to here. I have had an opportunity of spending 5 consecutive winters there, so I know how it operates; and I have been here for the last 10 years in our parliament, it is very difficult to transplant what is in America to have it suitable here.

Secondly, there is this issue that has just been mentioned by the previous speaker. When you want to define a family, we don't want the Conference or the constitution the Zimbabwe crisis where we have a loose definition of the family and then you will have everybody saying they have a right to a family. We would wish to have the actual intention of this Conference put down in black and white. That is, the decision of a man and a woman over 18 years. Or if you want to include other things tell us so, then we can make the enlightened decision.

Lastly, Mr. Chairman, is the story of clause 32 – The right to life, and the abolition of the death penalty. I have had an opportunity of having one afternoon, some two years ago, almost 60 letters, all of them mailed between Vermont, New Hampshire and Massachusetts in the United States by maybe college students or some people who had spoken there. We would wish to have the story of death penalty and the right to life treated with caution here. You will meet characters in our society who have no regard for other people's right to life. Now, if the state has been doing the death penalty the wrong way, let us not react by doing irregular things. If it has been very easy to kill somebody who has killed somebody else through the judicial process, let us make sure that our judicial process is so difficult to have somebody face the death penalty, but the death penalty is necessary today, in our history and time. Thank you Mr. Chairman.

Clapping.

Hon. Delegate Yusuf Haji: Well, you people are not raising, let us give 61.

An Hon. Delegate: Thank you very much, Mr. Chairman, I will have to give information--

Hon. Delegate Yussuf Haji: Can you give us your name please? Your name?

Hon. Delegate Kimeto Anthony: My name is Honorable Anthony Kimeto MP for Sotik. My contribution goes to old people, old members. That is old members must have right to live, then or must have all equal rights. What I am seeing here Mr. Chairman, is when we are saying old people at what age should these old people come to? And if old people come to, lets say in Israel old people are taken to be on the age of 75 and at this age of 75, they are enjoying state facilities. But here in Kenya when you attain the age of 75, you still continue to find you day-to-day affair. Why don't you include as you reach the age of 70 and above it is the state which you will enjoy all the facilities of the state given free. Like the children from standard one to standard seven they are given free education, why don't you set these old age at the age of 75 and over to be given free everything, food and what have you because they are not able to do anything, you see, so that you will try and hope that you will reach at the age of 75, to be able to enjoy the state facilities, hospital and even going through what we call seeing whatever, enjoy visiting the republic of Kenya. And that is a state affair, so that you acquire the age of 75 you will be in a position to get what we call free state facilities, otherwise you will not be free when you will still be fighting from hand to mouth, just trying to live your own way as enjoying what we state, enjoying nothing but you will be enjoying a lot of problems. So let us bring in and put under our position that way, as you retire reaching the age 75, you will become the state.....

Interjection:(Inaudible).

Hon. Delegate Kimeto Anthony: Yeah, you will become the state liability. When you come to the children of what we call, it has been said here the disabled families they should have equal rights. Mr. Chairman, we have forgotten to say that even these disabled people the blind, the deaf let us say with other disabilities. Even if they are enjoying this, their children have so many problems, even the blind have children and during the time when they are going to University or in primary level or in a hospital they are also charged. If it is difficult for you what we call the person with good sight, what we call the person with what they call all abilities and what have you it is difficult to pay our hospital bills. Why don't we say anybody who has been disabling either by blindness, either by whatever the product of these people regarding their children what we call enjoy the same facilities, whether in hospital, University because they bare children mpaka University levels. If it is difficult for you, do you think the blind person who cannot see

even the money when you give him, when you give him the money he does not see that this is a cheque, the money, there no difference.

Hon. Delegate Yusuf Haji: Thank you very much Mheshimiwa, thank you very much Sir for your wonderful contribution.

Hon. Delegate Kimeto Anthony: Thank you very much.

Hon. Delegate Yusuf Haji: I am going now to recognize 519.

Speaker: Number four.

Hon. Delegate Yusuf Haji: I will come back.

Hon. Delegate Sister Marie Therese: Thank you very much Mr. Chairman. I am Sister Marie Theresae Gachambi, number 519 Religious Organization. Mr. Chairman I would like to first comment on article 32 and confirm what all other Honorable Delegates have mentioned. Everyone has a right to life, I agree but there is need to specify that these right to life applies from conception to natural death.

The other point is article 36, other Honorable Delegates have mentioned that and the right to the aged which has been ignored in the draft, I would feel first of all the United Nation have already defined the age over 50 to 60 and over ad the aged, but I would like to say that, could the state make provision for the maintenance and welfare of the aged. That the following all the other aspect that we have put there, give old people a voice because this is part of our African culture, and in that context I wanted to move to the issue of the family.

And I would like to appeal to all the Delegates. Family is a very important value in African culture and we need to give it a real important place. I would like to suggest to Mr. Chairman that when we are defining the family to ensure that it is a union between man and woman.

(Clapping from the Delegates).

Then we, Mr. Chairman in that context of the family when we are dealing with the issue of the rights of the child and I hope Honorable Members will agree with me that according to African culture we are to keep some of the values. When we say every child has a right be free of corporal punishment, I agree I am a teacher. But I also feel that when we say other institutions irresponsible for the care of children we need to add, to define these others, in other words the right of the parents that we cannot take away because it is a God given right to at least discipline. I am talking of the violence, but to discipline. I am saying this because of an experience I have studied in United States where I saw an African child two years going onto the telephone to try and call the Attorney because Dad just said, “you know don’t do this”. So perhaps we need to kind of also put some aspect that also shows the responsibility of the child to the parents.

The other aspect is article 45, (1) and this is, see where it gives the freedom of artistic creativity and all that which opens the door at the flood of pornographic films and all that kind. If there is something that can be put to ensure that we in Africa don’t get these aspects that will clearly spoil our African family.

Now the other part is part four of that administrative justice, we need to take care these aspects has already been mentioned by other Honorable Delegates. The prices of the home, I am speaking this because also as a religion I belong to a family because the religious community comes from the family of the society I come from, but once I join a religious group, I belong to a family and if there is also ethic within that family so that some of the aspects put there are not forced. Mr. Chairman thank you.

Hon. Delegate Yusuf Haji: Number 531.

Hon. Delegate Mustafa Ali: Chair, Honorable Delegates my names are Mustafa Ali Delegate number 531. Chair I want to bring to your attention as well as the Honorable Delegate article 37 regarding children. We must clearly consider between our child labour and child work, where by child labour while we don’t want to have a situation where we take out children into child labour, but child work is acceptable, things to do with a mother sending a child into the shop and to run errands here and there that should not misconstrued to be a child labour, it is child work.

Secondly on slavery platitude and forced labour, article 42, I am not seeing an article there that tackles trafficking, we have heard instances where people have been trafficked especially the children and this must come very clearly in our constitution. We don't want a situation where our children are trafficked; we have heard while we appreciate the power in exchange that comes into this country via tourism. Some of these people are pedophiles and we don't want such to come and spoil our children here in this country.

I will take you to the article on housing 593, Parliament may not enact. Why are we giving Parliament latitude and say may, can we say Parliament shall not enact any law that permit or authorizes arbitrary evictions?

I will go to environment article 63 and some of these multinationals are very cheeky, they have escaped the punitive patches in their countries and they come here because the cat ridge in that we have here is so large we must make it extremely expensive for them come and pollute our environment. Thank you.

Hon. Delegate Yusuf Haji: 443.

Hon. Delegate Roselinda Simiyu: Thank you very much Honorable Chair. My names are Roselinda Simiyu from the Trade Union. I would like to touch on slavery, solitude and forced labour. We should not have "may" it should be "shall".

Then article 43 on freedom of association, we also have the provision of civil society yet we don't have a clear definition of what it means. On freedom of movement article 51, we should qualify number two of article 51, where it says you have a freedom of movement but we should ask except when running away from criminal offence.

And then part three freedom of movement we should add not encroaching on people's property. Then on article 55, on labour relations, Mr. Chairman we as workers feel completely disadvantaged if we are going to be rolled together with the employers so that some of our rights are not attended to. We feel that we needed a special column for workers rights because we feel

that there should have been an inclusion that the state shall create an environment for creation of employment. And we also feel that under 51, there should have been provision for job security or security of employment.

And also on the same article part two where it talks about fair remuneration, it should be replaced with adequate and where we have the provision on C, form and join. Mr. Chairman what we know is that when we leave the formation of Trade Union that workers shall be free to form any Trade Union, what we have realized is that the employer can use that when a union is formed to create splinter union.

So what we are asking is the same way in article 90 where you have qualified the formation, the registration of political parties that part although there will be formation, it should be qualified of the registration like let's say if there is already an existing union in that organization another one should not be allowed to form. Otherwise it will keep on weakening the strength of the workers.

And Mr. Chairman, what we are also saying on article 56 is that everyone has a right to social security. We feel that there is need to put a provision where the state shall put in place a policy on social security.

And on article 57, Mr. Chairman is that it is just taking that people have a right to help, but it is not putting in place something that the state shall take all practical measures to ensure the provision of basic medical service to it's citizen.

And lastly Mr. Chairman on article 33 where it says everyone is equal before the law and there is need for equal protection and equal benefits of the law. What we realized Mr. Chairman that is not true, because if you look at the retirement age of the Judges is 75 and yet the retirement age for the workers is 55. And we know that at 55 somebody is still useful to the society, so I think that needs to be looked into. Thank you very much.

Hon. Delegate Haji Yusuf: Thank you very much. 461. Now before you continue, I have just reminded that we will start with the Bill or Rights from this Conference. So please when you are

referring to people with disability, you don't say disabled persons but rather say persons with disability. Please proceed.

Hon. Delegate Philip Ole Sironka: Honourable chair, Honourable Delegates, my names are Philip Ole Sironka from Kajiado district, Kajiado North constituency representing NGO's sector. I would like to bring to the attention of chapter five or clause 37 five of the children. That is the right of the children. I would like to comment something about the name, I have a problem with the name and I have some historical backgrounds or experiences because a name is actually something that gives you a recognition as a tribe and I would like to suggest that the name, this phrase to read this way, "every child has a right to a name and a nationality from birth and have their names including tribal registered". Why do I bring tribal? I bring the tribal because we have heard some kind of people or groups of people within a district or within an area who when they come from place to another place they come and take other people's names.

(Clapping from the Delegates)

Hon. Delegate Philip Ole Sironka: When your father comes there and your mother is expectant and you are given birth at Kajiado, you are given a particular name and you come from another region and that one misleads the people and I would like us to recognise the issue of the name in the tribe because a tribe as you are saying, Kenya is made 42 tribes, why should you shy away from your tribe?

Last year I was just lucky that I went to Spain and I met a man in Barcelona. This man was conducting a business on cultural basis. This man is a Kikuyu but he calls himself Ole Masha. I just came to realize that the name Masha is the short name of Macharia.

(Laughter from the delegates)

Hon. Delegate Philip Ole Sironka: So this is a right, we have all a right to have a name, but I would request that the constitution should also recognize people by their own birth. And people of Kenya should also be proud of their names, they should be proud of their tribe as it gives you recognition.

I would also like to close with that and say that you are have said in the bill chapter five bill of rights that human being have the right of food, shelter and so on and so forth. Also remember the paternalists and remember the livestock that we keep, they have their rights to grass. So it is also part of the things that should be recognized. Whenever we go we need a grass, we don't need war. Thank you very much.

Hon. Delegate Haji Yusuf: I recognize 107.

Hon. Delegate Hussein Maalim: Thank you Mr. Chairman, my name is Hussein Maalim Mohamed, Delegate 107, I am Delegate from Garisa. Mr. Chairman I think this chapter a bill of right very important in our constitution and I would like to take you straight away to article 71, the state of emergency. I have chosen this one because I am a victim of this same article as a person and as the community.

Let me tell you a bit of history although we don't have enough time. In 1963 after independence a chapter was created in our constitution, chapter 127 the clearing state of emergency for North Eastern province and the neighboring district. I am happy this commission has written this chapter very well, because they have gone to the extent of saying, if the Government want to extend the state of emergency Parliament, Members of Parliament 70% of Members of Parliament must approve. To them what happens when that emergency was introduced in 1963, the Government of late Mzee Jomo Kenyatta continuo using that emergency until he died, that was all of you know how many years President ruled this country, 16 years. And then President Moi took over, he followed the Nyayo, he did keep that emergency law for 15 years from 1978 to 1991. I think that is 1991 it was repeated in 1991 I remember it very well I was in Parliament at that time.

Mr. Chairman all of you must have heard what has happened in that region, there was a massacre in North Eastern province the famous Wagala, you know there was a time when they decided to ban everything in Garissa town, there was a time people were killed in many many numbers in a place called Malkamari. This is the Act they have been using at that time, so we are happy this

has been written very well. May be I will ask the Delegates to slightly increase this number from 70% make it to referendum because this thing is very serious because the Government can misuse this kind of Act.

Mr. Chairman the other point I would like to talk is about water. I think it is article 61, it talks every citizen has a right to water in terms of quality and quantity. I think I have to share at least because I also happened to be one time a minister for Water and Development for a very short time. I did not do much, I must admit it. Mr. Chairman if you go to a place like where I come from people go for about 30 to 40 kilometers to get one jerry can of five litres of water. A woman can travel and bring two jerry cans of five litres or twenty litres for a whole family. Thank you Mr. Chairman.

Hon. Delegate Haji Yusuf: Thank you very much I want to recognize 462.

Hon. Delegate Samuel Totorei: Mr. Chairman thank you and fellow Hon. Delegates I am very proud to be associated with this conference especially because of what happened this morning. We exercised the application of the Bill or rights in anticipation, so I think we need to clap for ourselves. *(Clapping from the delegates).*

Mr. Chairman, in respect to people with disabilities we have three observations we would like to record and to seek assistance from our fellow Delegates. The first principle, is that of equality. Section 39 has stated that people with disabilities has the right to endure every other right and then it proceeds to saying that it will depend on when Parliament enact certain rules so that those can be done away with. We shall be bringing an amendment and seeking your indulgence not to give that leeway so that we endure the right now or forever more refuse or be denied it.

The other thing Mr. Chairman is this that equality is different from being the same. We would like to introduce a moral standard using the principle of equity, in other words if in order for me to run with you, you must give me five minutes head start, please don't be afraid to do so because you know you will catch me and perhaps even overtake me. And this brings in the principle of not only of equity but also of Affirmative Action, justification or Affirmative Action with respect to people with disability. But we would like to stress also Mr. Chairman that it is

unfair to ask for indefinite affirmative action, so we are going to propose and seek your indulging for inclusion of clause to some other appropriate place where Parliament will be required to review the actions that are taking the discussion within this principle ten years from the commencement of this constitution and five years thereafter to determine whether there is still need for that Affirmative Action and if that need can be served by increasing or decreasing the presumed actions. So we shall be.. and I hope our sisters and other minorities will support us on this.

Mr. Chairman finally, we need to bring into effect the rights which have been given in section 39 and we shall be proposing to this Conference some addition to enhance section 39, but one of the things that will need to be done is, one our representation that we need in every appointive or elective position, we have people with disability to represent their interest.

Now somebody told me that we cannot provide enough representatives leave that to us, give us the opportunity, it will be our business to take advantage of it.

And the final thing is, in the issue of education for people with disabilities there is no substitute for education and I would like to propose that even before this constitution comes into effect all people with disabilities be given free education up to whatever level they can get, they are very few. They are very few, now they are less than five thousand people with disabilities in schools and sometimes we say they are twenty thousand, but I think that is a bit ambitious. But even at secondary school, college and university. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much, 351? What is the point of order please!

Hon. Delegate: Thank you Mr. Chairperson, now you realize since we have eight positions which you are picking from, I suggest that since we also have eight rows, you begin with the first row then you go to the second, third, fourth and so on.

Hon. Delegate Yusuf Haji: I say that is not a point of order please hand over.

Speaker: But you have got it.

Hon. Delegate Pascalina Lebarleiya: Thank you Mr. Chair, my names are Pascalina Lebarleiya, Delegate number 351 Laikipia district. I would like to refer you to the article number 44(1) that talks about freedom of religion, beliefs and opinions. Sub- article (1) says every person has the right to freedom of conscious, religion, thoughts, beliefs and opinions. In my own opinion I will just suggest that it is good that we should clarify this phrase clearly, it should be specific and to the point because in our country we have other religions like devil worshipers who require human blood for their sacrifice and in article 32 we have been told we have right to life. We have other Kenyans who sacrifice their children, their fellow relatives for sacrifices. How are we protecting this article 32? So please my suggestion is, we should be specific from point number one, because people will take advantage of saying that we have been given freedom of religion. Thank you Chair.

Hon. Delegate Yusuf Haji: Thank you very much, 454?

Hon. Delegate Kathurima M'inoti: Thank you very much Mr. Chairman, my name is Kathurima M'inoti Delegate number 454 representing NGO. A couple of quick points. The first one is in support of what the Honourable Delegate from Garissa Maalim has been saying, what was happening in North Eastern Province in the early 60's, 80's and possible what you have been seeing happening in the Rift Valley in the 90's was very close to genocide. And my proposal is that we must have a very clear provision in the Bill of Rights against genocide. I appreciate that the Constitution recognizes customary international law as bidding in Kenya and as genocide is a crime under customary international, but I think we seriously need to put it very expressly in the Constitution as provision of a genocide.

Article 37 (5) paragraph (N), which talks about the rights of children to legal representation, is it qualified! because it guarantees children legal representation if they're not likely to suffer injustices. The position virtually everywhere in the country these days is that, if you have a person who is been prosecuted and they do not have legal representation, you can not see their getting fair trial. And I can see it is the same position about article 69 (18) so we need really to consider at least for the children to make it compulsory legal representation by the state. We

should not say, they should get representation if they will suffer injustice, because clearly if they are not represented in many situations, they will suffer an injustice.

Article 41, Mr. Chairman about freedom and security of the person. I think we are living at a time when there so many serious diseases and doctors have not been able to get cures, we need also to put this provision which we also find in very many Constitutions, that a person should be free from medical scientific experiment without their consent. Article 44(6c) this one I will really require some kind of slight clarification from the Honourable Commissioners Baraza and Lethome. It provides that nobody should be forced or compelled to observe a religious rest day, which does not belong to their religion. I have really no problem with the principle, but in practice what would it mean, take an example that one of the Delegates raised about the Easter holiday. You see, if you want service apart from public offices, on Easter day, Good Friday or Easter Monday in Nairobi here, the chances are that the offices will all be closed because virtually everybody there is a Christian.

Or even if you want service on Christmas day, there would be nobody there, so if you do not belong to the Christian Religion, ain't you being really force to take that day of rest. I would like some clarification about the reasoning behind that article, then article 48 (3) says that nobody should compelled to join an association of any kind, again I agree with the principle but the problem is how do you discipline professionals. In this country once you are a professional you are compelled to join professional organizations, like Lawyers, Doctors, Engineers, and it is on the basis of that, that you are able to be subjected to disciplinary action if you violent principles of the profession. How would you be able to subject a lawyer who squanders client's money to disciplinary action, if he has the option of staying outside the legal profession?

Then the very last point, Mr. Chairman is in connection to article 63, question of languages and culture and then linking it to article 5, which we discussed yesterday, the moment we recognize personal laws, in the Draft, its African Customary law, Islamic and Hindu personal laws. The problem you always find with African Customary laws is that actually there not quantified. At any one point you cannot say with certainty what---

Chairman rings the bell to stop the speaker.

Hon. Delegate Kathurima M'inote: I will rush through that one Mr. Chairman please, you cannot say what is applicable African Customary Law, in courts, if you want the courts to follow a principle of African Customary Law you have to prove it. The problem we have here therefore is that you are not sure at one point what is the Ogiek, for example Customary Law on a point. I am suggesting Mr. Chairman that you consider setting up some kind of board, which will be responsible for quantifying African Customary Law, so that we know for sure what those African Customary Law are.

Hon. Delegate Yusuf Haji: Thank you, 56 please.

Hon. Delegate Kivutha Kibwana: Thank you Chair, my name is Prof. Kivutha Kibwana number 56. I want to observe the following.

Hon. Delegate: Point of order.

Hon. Delegate Yusuf Haji: Point of order, yes.

Hon. Delegate Chemwey Naibei Sammy: Mr. Chairman, with due respect to the Chair, thank you for allowing to raise a point of order, the honourable Delegate who is speaking has changed the position in order to be seen, would the Chair be kind to be also considering this side, because since yesterday, Chairman you remember we have not been accorded a chance, he may continue, but let the Chair also take note of that order.

Hon. Delegate Yusuf Haji: Thank you.

Hon. Delegate Kivutha Kibwana: Than Chair it is actually factual that since nine have been, consistently raising my hand and it appears like the back raw it is not easy from where you are seating to actually observe us, so I thought if I came near Biwott's desk you might see me. I just want to make my quick point Mr. Chair because we do not have time.

Hon. Delegate Yusuf Haji: I think number 56, ladies and gentlemen, honourable Delegate, please do not make our work very difficult. I think I have tried my best, I have been trying down, in the middle and at the back, I cannot satisfy everybody, it is not possible.

Hon. Delegate Kivutha Kibwana: Thank you the Chair, I think since morning I have been listening to ask. It is apparent to me, when we get to the substance of our discussion, actually we are in a lot of agreement and from when we started talking on the Preamble, national goals and so on, through citizenship, and now Bill of Rights, most of the contributions are actually about how to refine what we have. And I really think that as we settle, we are going to find that what is common among us is more than what divides us. And I am very happy at how we are proceeding.

And before making the two other points on the Bill of Rights, I want also to say that the motion by Murungi may have been a blessing in disguise. Because what it has achieved, it has shown so clearly as I said when we began, that this Conference cannot be stopped. And I think perhaps anybody else who wanted to try will think twice. And I am also appealing to Members of Parliament like myself to realize that if in Parliament one was to try to subvert what this Conference will have decided, that might be suicide for the Ninth Parliament, and I personally do not want to be part of a suicide situation.

Article 34 in terms of discrimination, I think it is important for us to consider health status, so that we do not discriminate on account of health status. I am saying this because with the HIV/AIDS pandemic, there people who might be tempted to discriminate on account of AIDS status. And therefore I think that is one important aspect that should be accommodated in the non-discrimination clause.

Secondly, I also think that we have not provided for rights of young person. Actually we have the rights of women and older persons and the persons with disability and so on, but although 50% consist of young people, this Bill of Rights section does not actually give a specific article and I would require the relevant working groups to take this on board. It is very unfortunate that although we have provided very well in this Draft, for the rights of children, those under 18, it is very unfortunate that they are not presented here as Delegates. At least we should have some of

them represented so that they can tell us, whether they like being disciplined or they do not like being disciplined and things of that issue.

And finally, the part of women and affirmative action, I really plead with us, as we proceed in this deliberation to really secure the position of the Kenyan woman within our Politics. Because they have been disadvantaged, we are going to be stronger if we enable our women fork to participate in a robust manner within our society. We will not be weaker for it and therefore I really need to say that this perhaps is the most important part of the entire Constitution, the Bill of Rights. Thank you.

Hon. Delegate Yusuf Haji: I would like recognize 542.

Hon. Delegate Ibrahim Omondi: Thank you Mr. Chairman, I am having breath of fresh air because you recognized me. My name is Ibrahim Omondi, Delegate number 542. I would like to draw the attention of the Delegates to article 33(3) on the family, and I just add my voice to what was said earlier, but also saying that, as a churchman, we do not want to be confronted by a situation where a Mr. Onyango and a Mr. Odhiambo come to be wedded. So we must be very deliberate and say that people who get married must come from the opposite sexes. That should be very clear Mr. Chairman otherwise you will get us in big problem, like it is happening in some other parts of the world.

Article 37 (1) on the Rights of Children, I also like to add my voice to Delegate Gachambi who said the children also need to be disciplined by parents. Because in some countries if you discipline a child, you are taken to court. And we do not want that situation here, we want to raise disciplined and responsible citizens in this country.

On article 32(1) on the right to life, here again Mr. Chairman I am adding my voice to another Delegate earlier, but we have a situation in this country where we have 700 or more illegal abortions everyday. So we must be very deliberate and say life begins from conception to natural death. On article 31(4) Limitation of rights, Mr. Chairman, I want to quote, the provision of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Islamic Law to person who profess the Muslims faith in relation to status, marriage, divorce and

inheritance. Mr. Chairman I recommend that this Clause be deleted in its entirety as it discriminates against the individual rights of a Muslim woman on the basis of Religion and contradicts article 33 and 34 on equality. This provision fundamentally contradicts the Constitution. Secondly it has the potential to create a peculiar conflict and burden on being applied by a Muslim or another individual from a different faith, Mr. Chairman, I think that article needs to be re-visited.

I would want to draw the attention of the Delegates to the Chapter 2, article 10 on State and Religion. And I strongly support and endorse Clauses one to three, which reads State and Religion shall be separate, there shall be no State Religion. The State shall treat all Religion equally and require Mr. Chairman that the spirit of this article be fully reflected in the entire Constitution. In other words, Mr. Chairman, I am saying that no one Religion should be entrenched in the Constitution.

Finally Mr. Chairman, I also want to acknowledge the work of the Commission in the Preamble, they have actually succeeded in the red book that some of us are finding difficult to read, but they acknowledge the place of God. And the phrase I am referring to Mr. Chairman reads---

Interjection: Inaudible-- sorry

Hon. Delegate Yusuf Haji: Thank you very much.

Hon. Delegate Omondi Ibrahim: Thank you, the place of God is acknowledged and I appreciate that very much, thank Commission for doing it. Thank you.

Hon. Delegate Yusuf Haji: Thank you very much, what we shall do please is we will stop there, let the presenters respond and then we will break for tea and then come back. There is enough time, when we come back we shall start from here and then come this way. Okay some people are suggesting we start from here.

Hon. Delegates: No.

Hon. Delegate Yusuf Haji: No, this arrangement will go the way we agreed. 576 did you say you have a point of order? It must be a point of order please. Can you raise it later?

Hon. Delegate Simon Mwai Gakuya: Thank you chair and fellow Delegates I would like to request is it that may be I am not a Christian or I do not look like a Christian or I do not look like a Muslim that may be I am been discriminated.

Hon. Delegate Yufuf Haji: You are 100% out of order, please go ahead.

Com. Nancy Baraza: Thank you Mr. Chairman, if you keep quiet I will try to respond to the issues that have arisen. Mr. Chairman I think what I would like to commend is what has been coming from the floor is not really questions but comments as Prof. Kibwana on how fine tune the Bill of Rights, otherwise what I see is that people are basically in agreement on the principles are that contained in the Bill of Rights and we really appreciate your observation.

I would remark on the issue raised by honourable Delegate 487 Mr. Rihal, on freedom from discrimination and insulting remarks. I think that is very valid and if we left it out, I think it would be part of their contribution and it would strengthen that particular provision. And it just did not arise here, we went around collecting views and there certain sections of our community suffer and Mr. Rihal's community suffers particularly and the views we got is that by virtue of being Asian they even a target of extortionist official and otherwise they cannot get citizenship, they have been here for 100 years, so those are the things we got and we are happy that you are bringing it up, if we left it then your contribution will be taken into account.

On the sufficient provision for the elderly people and retirees again we will welcome----- interrupted.

Hon. Delegate Wilfred Koitamet: Excuse me, Hon. Delegate can we maintain order and those who are moving out can we do it silently please. The rest would like to listen.

Com. Nancy Baraza: I think we welcome your contributions again that will go into enriching the Bill of Right. Mr. William Yiaile 361, pastoralism not been recognized, I think there is a

specific Chapter on the rights of minorities, and I think that will be addressed. And I think if it misses out again we will appreciate that contribution and it will go into enriching this Bill of Right.

On the issue of article 38, right to marry must be male and female. As drafters we did not think we were refereeing to anything other than that, that is if a voluntary union between a man and a woman. But if Delegate feel that it is implying other things then I think you are right again to change the language. Although here I want to be a bit mischievous, we did receive a memorandum at the Commission from the gay community. They had a memorandum and they said there they, and they are entitled to rights. And again I think that is for you to consider, but if you feel that is not part of what you want to be a right to change. Hon. Maoka Maore, on article 60, on the rights of arrested persons. I do not know why if anything sounds good, then it has to be imported. I started off by telling you that human rights are universal in nature, so that if arrested person in America enjoy good cloth and are given room to sleep in, why should it be a problem when it is an African arrested person. It does not mean we have downloaded it from the internet. An African is as good as an American and if we can reach a situation where arrested persons can enjoy there rights and be treated differently then I think as a country we will moving forward. I do not know what else, Mr. Kathurima I think again your points are valid, will enable us enrich the Bill of Right, I not your concern, we may not have been perfect, but that is exactly why we are here, thank you for purposes of enriching the final draft. My friend here.

Com. Ibrahim Lethome: Thank you, I think I have only one commend to make, I will just comment on one article and that is the issue that was raised a Delegate I cannot remember the number, but it is on article 31 (4) that is the exclusion clause whereby Muslims have been exempted from the application of provision that talk about equality. One thing I would like to remind. Can I continue sir?

Hon. Delegate: Could you please speak into the microphone, we cannot hear you when you turn your head away from them.

Com. Ibrahim Lethome: Point noted thank you, I want to comment on article 31(4) that is the provision that exempts Muslims from the application of all the provisions under this Bill of

Rights that talk about equality. One thing that may be you need to remind ourselves as honourable Delegates in this Conference is that what we have in this Draft Bill is a reflection of the views that we as a Commission received from people. And when you talk about equality and especially in reference to the rights of women, and if I can quickly refer you to article 35, sub article 3, which reads, women and men have an equal right to inherit and if you could just stop there, talking about equal right to inherit, the views that we received from Muslim women on this issue is that they would like the operation of Islamic Law because it provides them for more, than if we subjected them to the application of equality. Because according to the Islamic Law of inheritance the rule is equity and not equality. So we will be denying Muslim women a right that they have been provided for under Islamic Law on inheritance if we subject them to equality. Hence that exclusion clause, so here the idea is to accommodate the needs of the women to be treated equally with men, but also for women who feel that just leaving them with equality they will be losing something, they say they want to be exempted from that because Islamic Law provides us for more than equality would provide us, hence that exclusion clause that we have under sub-article 31(4).

Com. Nancy Baraza: Sorry, on issue raise by Prof. Kibwana on the rights of young persons, I agree we do not have it here but I remember running around to the library to the internet looking for jurisprudents on youth, and I couldn't get any. So I sort opinion from my consultant, and the Chairperson, Prof, I do not know what you would say about this one. We did not put a provision, but there are completely no jurisprudents on that, but Professor would have another answer.

Prof. Yash Pal Ghai: Well we felt that every person is entitled to the rights in the Bill of Rights, it was not necessary always to identify particular groups, we do know youth from Kenya do suffer from certain disadvantages, but precisely because they such large section of the community and because they young and vigourous, ambitious, we did not think it was so necessary to provide for them. We did not want to fragment the community completely into different sections, and we felt the youth was very able to protect their own interests and will of course entitle to hold the general interest, and that was the reason why we did not put anything in for the youth. But if it was the wish of Delegates and if some precise formulation could be advanced I am sure the relevant committee will consider that.

Hon. Delegate Mwangi: Thank you very much we will now break for tea and come back at exactly five minutes to five so that as many as possible Delegates will be able to present their views. Thank you very much.

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After Tea. Session started at 5.00 p.m.

Hon. Delegate Yusuf Haji: Honorable Delegates, I know you have a lot to contribute, but you can't do that if you stay outside. We proceed. I call upon Commissioner Lethome to continue.

Com. Lethome: Thank you Chair; I would just like to make some comment on Article 32, which is the Right to Life. Because we received various responses from the Delegates, and I would just like to make a clarification here. I remember I said as I was taking you through the Articles that the Right to Life here begins from conception to death. And that was also echoed by some Delegates from the floor; but maybe we would like the Delegates to think about the Right to Life of an expectant mother. Because I know, even according to religious laws, when the life of an expectant mother is in danger, then we have now two lives here to consider. The life of the foetus and the life of the mother, and preference is given to the life of the mother. In fact, if I could speak for Islamic religion, Islamic law is that if the life of an expectant mother is endangered, or is at risk, then the life of the foetus can be terminated. So maybe what we should be talking about here is life from birth to, as some people put it or some Delegates put it, to natural death. But we should also be thinking of the life an expectant mother here. That is all I wanted to say; thank you.

Hon. Delegate Yusuf Haji: Now we are going to go to the second row; and I want to recognize 358, 358.

Hon. Delegate Nakalo David Okiya: The Chairman, 358 is my neighbor, they have not given me my number; my number is 377, *(Laughter from the Delegates)* yeah they have not given me my number. It has not been printed and my name is Okiya David, a Delegate from Lugari District. I wanted to look at Article 59(1), where they talk about rights on housing. I would suggest that it should be decent, dignified, culturally acceptable, and it should also be guaranteed, instead of just leaving it the way it is.

On Article 58(2), there is a right for education, compulsory and free education; but I would wish to propose that the education should also be relevant, adequate, quality, universal and also

market- oriented. And secondary and tertiary education should also be subsidized to allow accessibility to many people.

On Article 34, there is maybe a deliberate attempt to leave out the youth. The youth have been left out, although other categories have been mentioned, like women, the old, children. So, I propose that we should also have an Article, which will talk about the youth, because they are the ones we are building up for future employment. Obviously they have always been promised that they are going to be the future leaders, but it is like we are not thinking about them. And I can define the youth as from the age of fifteen to thirty five who may not fall under the category of children.

However, I would ask Commissioner to give me some reference on whether, in any part of the world, the disciplined forces are allowed to belong to any Trade Union, because maybe it could be a problem. They are normally guided most of the time; so I don't see the reason why disciplined forces should belong to any Trade Union in Kenya if they do not belong to any Trade Unions elsewhere. And if they belong to any Trade Unions elsewhere, whether it has been successful or not.

I would also wish to replace Article 61 with 'clothing', so that we have food, clothing and housing; because clothing is a basic need that every human being cannot do without. Especially if you go to the northern parts of Kenya, you will find out that most of the people move naked. That is my contribution.

Hon. Delegate Yusuf Haji: Thank you very much. 295.

Hon. Delegate Saipstone Ngalaatu Musau: Thank you very much, Mr. Chairman; I will be very brief because I know many honorable Delegates would like to ...

Hon. Delegate Yusuf Haji: Can you just give me one second please. Just a minute, there is a point of order...

An Hon. Delegate: Following what the Delegate from Lugari said that people in Northern Kenya are walking around naked, I think that is a wrong impression. People there are well-clothed and I think you are misleading the honorable Delegates on that issue. Thank you.

Hon. Delegate Yusuf Haji: Thank you. Okay, the point is taken. Okay proceed.

Hon. Delegate Saipstone Ngalaatu Musau: My names are Saipstone Ngalaatu wa Musau, Delegate from Machakos, Number 295. I will start with discrimination. Mr. Chairman, Article 34(1) which talks about discrimination, talks about discrimination on the base of language. And if we have got national language and official language, that is English and Kiswahili, it means the other languages have been discriminated against. So that one should be checked upon.

The other one is 36(1), on older members of society. It is written that every person ...No, not that one. it is stated that the older people should plan, it is their duty to plan for their retirement. I request that it should state that it is the duty of the state to plan for older members of society for retirement and the rest.

Slavery, servitude and forced labor, 42(1), there is that word of ‘may not’; and if Mr. Chairman you go through this document, you will realize that the phrase ‘may not’ is appearing almost in the whole document; and ‘may not’ may be misused. It is better we substitute it with ‘shall not.’

Then there is this issue of freedom of religion; that is 44(1). Mr. Chairman, one honorable Delegate said that he is discriminated because he is not a Hindu and he is not a Christian. Mr. Chairman, I will request that we had religiousness, because I might not belong to any religion, but I may be religious. Mr. Chairman, that is my contribution.

Hon. Delegate Yusuf Haji: Thank you very much. 85.

Hon. Delegate Marsden Madoka: Thank you very much, Mr. Chairman; I am Marsden Madoka, Delegate number 85. Mr. Chairman, allow me to echo the sentiments of most of the Delegates in saying that this is a very important chapter, and every Article needs very careful

scrutiny, because if we do not do that, whatever we pass here may make this country unmanageable.

Mr. Chairman, one of my points I wanted to raise has already been mentioned, but all the same I think I would like to bring it up again. This is the question of this freedom of forming, joining and participating in Trade Union programs. Certainly, I agree with my colleague that you cannot have the Forces forming Trade Unions; because if you have the Forces forming Trade Unions I don't know what would happen if they went on a strike, and this country would certainly become unmanageable. So it is important that we take note. There are other essential services, even the Police Force, can we say that they should form their own Trade Union and be able to participate in strikes? What would happen to the country? So, I think it is important that we make such a provision in the Constitution barring the Armed Forces and the Forces in being part of Trade Union movement. They can have special provisions in terms of having their own Commission, and so on, which will look after their welfare.

The other point, which I wanted to bring up Mr. Chairman, is the question of social security. This is Article 56, and I think this is a bit vague. They are talking generally about providing, ensuring everybody has a right to social security. I believe, we do need to have maybe as close a sentence, saying that the Parliament should be able to pass extra legislation to properly define what we mean by social security. What are we going to provide for these people when we are talking of social security?

The other one, Mr. Chairman was the question of Privacy, and they were talking about the rights of the people who are in custody. It was said we need to make provision for privacy when the spouse visits the husband and so on and so forth. I don't know what this really entails Mr. Chairman; but I feel that when somebody is in custody, he must be able to – as a punitive measure - he must be given all the freedoms that he will want as a person. We've got to have certain measures. Recently, there was one of the ladies who was in prison, and eventually she gave birth. I don't know what really happened; I don't know whether it was as a result of laxity in the prison. So, Mr. Chairman, those are just my few points; but I'm saying it is important that we carefully scrutinize every Article in this Chapter. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: 371.

Hon. Delegate James Koskei: Thank you very much Mr. Chairman; I'm Dr. James Koske, Delegate from Kericho District.

Hon. Delegate Yusuf Haji: Can you repeat that!

Hon. Delegate James Koskei: I am Dr. James Koske, a Delegate from Kericho District, number 371; thank you. My comments, I'm trying to seek clarification on a number of Articles here. One, is on children. We talked about children here, although I don't know whether children are adequately represented in this Conference, and we are making laws for them. I think if they were here, probably they would reject quite a number of Articles, or a number of rules that we are presenting in this Conference. One of the Articles that I am trying to seek clarification, is Article number 37 subsection 5(c); this is the provision of free basic education. And the provision of this free basic education is commendable, but I am wondering whether this should be really made compulsory. The question is, compelling children to go to school infringes them on their rights. There will be a situation where children will not probably want to be given instruction if they don't like it; particularly if this instruction infringes on their freedom to play, on their freedom to enjoy whatever they want to do. So, I am asking how this will be enforced without punishing the children if they don't go to school; what are you going to do about it? Are you going to punish the parents? Or are you going to punish the child? And again on Article 37, at 5, section (g), which talks about punishment.

The other part that I'm looking for clarification is on section number 44, I mean on Article number 44 subsection 5. We know that we actually need to provide employment to everyone, and everyone has to have access to employment without discrimination. And so, I am wondering whether this Article is not negated by Article number 202, page 39, where people professing certain faiths will only be employed in one particular institution; and I can see a problem here.

Again, Mr. Chairman, if you could allow me to go a little bit back to what was discussed yesterday, this is regarding the territorial boundaries of Kenya; and in that Article, ...

Interjection. Hon. Delegate Yusuf Haji: Please if you can bear with us, they will not be able to answer what we discussed yesterday.

Hon. Delegate James K. Koske: I need to comment so that in future somebody might want to—

Hon. Delegate Yusuf Haji: I think you will be out of order. If we allow that, everybody will now take us back, please.

Hon. Delegate James Koskei: Mr. Chairman, I think people have already talked about what was discussed yesterday and so this will not have been an exception. However now there will be no exception, please. Mr. Chairman if you can allow me, I would like to comment on Article 63 which is taking access to information regarding environment and I think this Article is already redundant because Article 47 talks generally about access to information. Thank you very much.

Hon. Delegate Yusuf Haji: Thank you very much. 523

Hon. Delegate Ruth Kamau: Thank you Chairman. I am Ruth Kamau, representing the religious organization. I am number 523 and I would like to comment on Article 38 section one, that is about the family. I think we should come up with a proper definition of the family bearing in mind: -

1. The age factor, that is, 18 years and above.
2. Should be of the opposite sex
3. Have a consent of whatever they indulge themselves in.
4. They should come up to a consensus that they surely want to become husband and wife.

This is to deal with cases of forced marriages.

And then I want to comment on Article 37, section 9. I think we should come up with the definition of a child in the first place. It should be the first thing so that when we read through the section we have a clear definition of what we are talking about and this should also apply to the older members. We should say who older members are before we can proceed to the other Articles. Thank you.

Com. Ibrahim Lethome: 259.

Hon. Delegate Salah Maalim Ali: I am councillor Salah Maalim Ali, a district Delegate from Mandera. I wish to thank the Commission for coming up with such a comprehensive document and especially in the Bill of Rights, there are very good proposals. I think it is a bit ambitious and I will also make my ambitious proposals. First and foremost, to promote the pastoral communities, nomadic hunters and gatherers shall be recognized as a legitimate way of life and my proposals are that the government shall provide at among other practices that will safeguard those who have that kind of lifestyle.

Number two is that in the Bill of Rights, we shall have Affirmative Action for pastoral nomadic communities, hunters and gatherers and also women who are marginalized. I want to refer to Article 52 on refugees because my Ward has been a refugee center in the early 90's as much as we are signatory to the international convention and UN charters, I am asking and putting a proposal that we put a section where--

Speaker: Yes please.

Hon. Delegate Yusuf Haji: Mr. Chairman, the speaker has introduced himself as a Delegate for the district and when he goes on to talk about his ward, I think it is contrary to the (*inaudible*). Perhaps he should withdraw that and proceed.

Hon. Delegate Salah Maalim Ali: I am giving a case from my Ward because my Ward also falls under the district and this is case of the refugees. I think the Delegates missed his point.

Hon. Delegate Yusuf Haji: I think this unique problem of refugees and I think refugees are not everywhere so let us allow him to have his time.

Hon. Delegate Salah Maalim Ali: I am asking that the International community, the donor agencies and, or UN agencies compensate for environmental degradation that are brought about that by the refugees. We have cases where Kenyans who are living along the refugee camp, are

forced to go into the refugee camp and pay their refugees themselves so that they could benefit from the services that are rendered around the camp.

On the issue of sanitation, Article 62, it was only the other day when Honourable Karisa Maitha was paying his respect to the dead on behalf of the council workers and I think it will be wrong for us to put the dead under sewages and other sanitation programs so it is better we refer them back to Article 32 and give them a decent burial there. Thanks.

Hon. Delegate Yusuf Haji: Thank you very much. 509?

Hon. Delegate Martha Rop: *Asante Bwana mwenyekiti kwa kunipa hii nafasi ingawa nilikuwa karibu nilale usingizi kwa sababu ya kubeba mkono saa zote. Kwa hivyo mimi nikija hapa nikisimama mbele yako ninauliza,* according to Chapter 5 Article 37 verse Article 5 'J', I would need or like to be given an interpretation or meaning of the period of time under children's rights.

Hii inazungumzia juu ya mtoto akiwa ametenda ama amehisi ama amehisi anaweza fungwa kwenye jela na mimi nikiwa mmoja wa tetezi ya haki ya binadamu ama ya watoto hua ninapata kazi ngumu sana kujua hii haki inaendeshwa aje na hali watoto wakiwa wanawekwa kwa jela vile mkisoma hapo sijui mnaweza sikia aje.

According to Chapter 5, Section 37 Article 'J', 'be so detained only for the shortest appropriate period of time'. *Na hapo ukiendelea, pia inasema 'be kept separate from others in custody'. Mimi singependa iwekwe hivyo ningona hiyo 'J' itolewe kwa sababu baada ya huyu mtoto kushikwa kama amefanya kosa apelekwe direct kwa custody ambayo ni ya watoto lakini sio kuwekwa kwa custody fulani for a short time vile imesemwa kwa sababu hii imefanya watu fulani ambao wanakaa kama wanyama pale police wafanye mambo ya kunjisi hawa watoto kama ni msichana. Kwa hivyo, ikiwa wameshikwa siku ya Ijumaa, ikifikia Jumatatu mambo mengi imefanyiwa huyu mtoto na huwa hatuwezi kujua kwa sababu kutoka hapo ananenda Kortini.*

Kwa hivyo, ningetaka nipewe ama nielezwe kinaganaga kama hii wakati itaweza kuwekwa labda masaa tatu tu na hiyo iwe chini ya mamlaka ama ulinzi ya huyu mwenye anachunga mtoto iwe ni

mwanamke polis ama kama ni kijana ni polis mwanaume kwa sababu hata wanawake kuna wale ambao wananajisi na tumeona hii mambo. Tumeona kesi hiyo iko kotini na tukonazo sasa kwa hivyo hiyo time ndiyo ningependa itolewe ama ifafanuliwe vile tunaweza kuchunga hawa watoto.

Hon. Delegate Yusuf Haji: 360

Hon. Delegate Lorna Tetu: Thank you Mr. Chairman. My names are Lorna Timanoi, a district Delegate from Narok. My concern is Article 41, Bill of Rights, Freedom and security of the person. My concern here is the security for people who live with wild animals.

In Article 41, you will find that those people who live or are surrounded by wild animals are normally killed, molested, their crops spoiled, their animals are eaten or killed by the same animals. Their crops are destroyed to the point that the animals like elephants follow the grains to granary. I therefore suggest that we add an Article on 41 'F' to read like this: "The right not to be molested or killed by animals or, everyone has a right to be protected from wild animals.

Hon. Delegate Yusuf Haji: Thank you very much.

Hon. Delegate Lorna Tetu: I have another one on Article 58 clause 3. If you read, this is still referring to the people who live in pastoral areas. They really have problems during drought when they are moving from place to place and that is why you will find that their children either drop out of school or don't go to school at all. So in Article 3, I would suggest that the State through reasonable measures shall provide 'make-shift schools'- then you continue - 'and accessible and post-secondary education. Thank you, Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 132 please.

Hon. Delegate Kihara Mwangi: Thank you very much Mr. Chairman, I am Kihara Mwangi. Delegate number 132. Mr. Chairman, I would like to thank the Commission very much for the hard work that has been put into this document but I would like to start, Mr. Chairman, from the Preamble. I say this, that 'yes the people of Kenya, have agreed on a number of things that we have but I would want to recognize--'

Murmurs from the Honourable Delegates.

An Hon. Delegate: Point of order.

Hon. Delegate Yusuf Haji: Please do not raise anything that was discussed yesterday. Bring something new sir.

Hon. Delegate Kihara Mwangi: But, Mr. Chairman, I was here yesterday, I tried to talk on it but didn't and I think I have got an input. Please, please, Chairman.

Hon. Delegate Yusuf Haji: My Brother, please sir, we have overruled another person before you so there will be no exception.

Hon. Delegate Kihara Mwangi: Thank you Mr. Chairman. Then I go to Section 32 and this concerns right to life. I know this has been talked about by a number of Delegates but I would want to correct what one of the Commissioners said, that we should revert to birth-- because the Delegates have been talking about the beginning of life from conception and one of the Commissioners said that we should revert to birth just in order to protect the mother. But instead we should say that the right to life starts from conception except where the life of the mother is in danger.

If I go to Section 33, Mr. Chairman, every person is equal before the law and has the right to equal protection and equal benefit of the law. True? But going to section 35, (3) where we are talking about women's rights we are saying that women should be accorded the rights of inheritance. I have no quarrel with that. True? But then we must define inheritance from who or from where because if the woman is going to be given the right to inherit from her parent and also come and inherit from the parents of the husband, that is discrimination. So we should provide that if we are going to having the women are going to have the right of inheritance, we ought to define what they are going to inherit or clarify that even men should have the right to inherit from the parents of the wife.

Laughter from the Delegates.

Mr. Chairman, I now move to section 37 (4). This is in respect of children, sub-section 4. A child, mother and father, whether married to each other or not, have an equal duty to protect and provide for the child. I would love that. But there is a danger here, that we might be opening floodgates to single motherhood. Just because some ladies and girls know that the children are going to be provided for by the fathers of their children, then they might decide that they are not going to be married and they can have as many children as possible. Indeed, we would also be opening the floodgates to polygamy and there is, I don't know what I would call it immoral or illegal or what, immoral sex by men because they will be moving everywhere where women will be ready to have children who will be catered for.

Come to Section 38, (3). Every person who is at least 18 years of age has a right to marry based upon free consent of the parties. That has been talked about but I have got a quarrel with what Commissioner Barasa said that, in defence of what they put in this Draft that it was because they received a memorandum from these people. That is not justifiable in the sense that just because the Commission received a memorandum from anybody, that was justifiable to put it in the Draft. Suppose they received a memorandum from armed robbers, what would happen? Would they have put it here and give them a right? This is a moral aspect and therefore it should be clearly defined that it is—in fact it can read as it is as long we include based upon the prior consent of the party to those sections.

Hon. Delegate Yusuf Haji: Thank you.

Hon. Delegate Kihara Mwangi: Section 44 (1), just this one. Section 44 (1), Mr. Chairman. And this is on freedom of Worship. We have got--we cherish the supremacy of God in this Country and we believe that, if you read the preamble -- that is why I was going there -- but when we provide freedom of worship and leave it open we are opening again floodgates to anybody who wants to worship -- like devil worship. Devil worship, you will know for sure, has got evil practices which will not be acceptable to society, like slaughtering children and eating them and taking blood and what have you. Therefore, it should be--

Hon. Delegate Yusuf Haji: Now you –Order! Mheshimiwa, order! You are out of order now.

Hon. Delegate Kihara Mwangi: -- Thank you Mr. Chairman. Please bear with us. Now you--

Com. Nancy Baraza: I think I want to clarify this issue Honourable Kihara, on the issue of article 38. I think the intention of the Commission is, if you look at other Constitutions which allow gay rights the language is clear. Now ours here wasn't intended like that but Kenyans have read through and it seems like we are allowing, that is why I said, that is why we are here you can change the language. But I also wanted to say that as much as we say there are no gays or there should be not, they are there, I said we received memorandums from them but that wasn't the influence here. I am saying, if you read it that way then you have a right to change the language to suit but they are also there, they made submissions.

Hon. Delegate Yusuf Haji: Thank you very much, before I give the chance to the other group there is an announcement. The Steering Committees are informed that after this session, there will be a meeting of the Steering Committees, so all members of the Steering Committee would you please participate in that meeting. Now I call upon 473.

Hon. Delegate Pamela Mboya: Mr. Chairman my name is Pamela Mboya, number 473. Mr. Chairman, I would like to refer to the various mechanisms for enforcing the rights of the disadvantaged and the disabled. The reports of the Commission has gone at length explaining how these rights could be enforced, including legislation, policy. Including mainstreaming issues of these particular disadvantaged groups in various national development programmes, including social security as is indicated on page 83. My concern Mr. Chairman is that these are in the report but when I look at article 36 discussing the older people, the issue of legislation and policy is not mentioned and I would like at some point for us to consider and bring it in because without legislation or policy, without mainstreaming the issues of the aged in the national development programme we will not be able to achieve very much except go through the code.

Mr. Chairman, I would like to also refer to article 57, which is talking about health. Mr. Chairman, this is a very vague paragraph and in reference to the aged Mr. Chairman, I stand to be corrected but I understand that National Hospital Insurance Fund does not allow people over 60 to contribute to it. In other words Mr. Chairman, Kenya society is saying after 65, you must

die unless you can afford to go to the bigger health insurances and I would like us to look into this issue Mr. Chairman.

Finally Mr. Chairman, I would like to say that really some of the poorest of the poor are the old people but these are the same old people who are today looking after the orphans, AIDS orphans and I would like this to be taken into account Mr. Chairman, for example when we are discussing AIDS Awareness Programme. It is the elderly that are left out, they are never included into these programmes. When we are discussing poverty reduction programmes it is the elderly again who are left out, they are the poorest of the poor. Mr. Chairman I would like to bring this at the Committee stage so that we can get to discuss them. Thank you.

Hon. Delegate Yusuf Haji: 82.

Hon. Delegate Simeon Lesirma: Mr. Chairman, I am Delegate 082, my name is Simeon Lesirma from Samburu District. Mr. Chairman I rise to support article 68 on violation of rights. Mr. Chairman, violation of rights particularly by the State, as I speak now a young man is serving six months jail term, this young man Sande Ololoju from my village is serving six months jail term for being in Kenya illegally and when he finishes the term, the Magistrate has directed that he be deported to Tanzania. Why Tanzania and not Ethiopia, why he originated I don't understand.

Mr. Chairman, the problem here is that he doesn't speak language. He is illiterate because our Constitution did not provide for rights of education earlier on so he cannot communicate. He can only be released if I get a letter from a Chief, his father is an Ex-Chief who died sometimes back, he would be released if I get a letter from a Chief. I used to be a Permanent Secretary and I am now an MP, I am not more senior than a Chief?

Mr. Chairman, I would like to support article 68 (ii) which says citizens should not be remanded if the likely sentence is likely to be less than six months. Nairobi Remand Prison was designed to accommodate I believe six to 900 inmates, if you go there because I went there this week to visit the young man, you will find 4,000 inmates and a number of those people are serving sentences of less than six months. I am told, although there is community service provided under

the law the Magistrates are reluctant to impose sentences to serve under community service. I don't know why the State enjoys violating the rights of 4,000 Kenyans, it is dangerous to live there, it is unhealthy and it is a security risk.

Mr. Chairman, article 5 (i), Section one, freedom of movement and residence, for the sake of this young man Sande Ololaju I would recommend that it is modified to read, every person has a right to the freedom of movement within the Republic of Kenya not just a Samburu has the rights of movement within Samburu. They suffer quite a bit when they come to Nairobi.

Section 5, one (iii), entering and residing anywhere in the Republic of Kenya, I have no problem proving that that particular section does not contradict the land rights of minority groups when Ole Masha and Ole Nyango may want to acquire land. (*Applause*)

Section 38, I would want to recognize the right to single girls to found families under certain African traditions, there are single girls who may not by religious or customary regulations obtain husbands and they are allowed to found families and inherit from their parents. The law is not very clear whether single girls are recognized under customary or otherwise.

Death penalty, I am glad death penalty will be abolished because the Prison Officers who implement this get traumatized for the rest of their lives, the hang man. I think I will stop there. Thank you very much.

Hon. Delegate Yusuf Haji: Thank you very much. Now I recognize 5... Number 510.

Hon. Delegate Atsago Chesoni: Thank you very much Mr. Chairperson. My name is Atsango Chesoni, Delegate number 510 representing women's organizations, I would like to make reference to several articles. The first article I wanted to respond to is what one of the Delegates had said earlier in respect of Article 34 (1) discrimination on the basis of sex as opposed to gender. Gender is your socially ascribed role. Sex is actually your biological sex so if we change that, that is where I think you would have the problem. This is to prohibit discrimination because you are a woman or because you are a man.

The second one is to do with Article 38 sub section 5. I wanted to recommend the insertion of an Article 38 sub section 5 sub section C. Right now in Kenya there are certain types of marriages that can not be registered for example traditional marriages. This is actually very problematic because what happens is that since men can marry more than one woman a man gets married under traditional customary law, he does not inform the woman that he is then approaching, and then seeks a marriage under another form of law. This is very problematic because then the woman finds upon the death of the man that her marriage does not exist legally. We therefore need to be able to have all forms of marriage registered so that people are able to know if they are entering into a marriage with somebody that is already married and then they can choose whether or not they want to marry that person.

The other section which I would like to make reference to is section 37 sub section 4. Honourable Delegates, with all due respect, it takes two people to make a child therefore two people should be responsible for that child. That is all I want to say in respect of what the Honourable Delegate had said a little bit earlier. Finally, in respect of Article 45 sub section 1 sub section C, we had had a contribution from one of the other Delegates regarding artistic creativity. In the past, our experience of freedom of expression has been that it is actually used against people who are using art progressively. For example the film Malcom X was not shown in this country because the Kenya Film Censorship Board considered it to be a racist film. So ironically, this area of artistic expression has actually been used against the citizens not to prohibit forms of art which are problematic. Let us please consider that when we are looking at that section.

I then wanted clarification on Article 73 sub section 3 in respect of the Chief Justice making rules for the implementation of the Bill of Rights. Right now Kenya has a very strong Bill of Rights. However the biggest problem that we have is that it is inoperable and one of the reasons it has been inoperable is that historically the Chief Justices have not made those rules. I am therefore wondering if we return ourselves to a situation where again the Chief Justices have the right to promulgate the rules, I know we have put a time period on it. However is it not possible for us to just have a Bill of Rights that is operable, that does not necessarily require Chief Justices to make rules. This is a technical question, but I think we need to keep our historical context in mind. Thank you.

Hon. Delegate Yusuf Haji: Thank you very much. The last person now will be 388. I mean on this side.

Hon. Delegate Sammy Chemwey: Thank you Honourable Chair. My name is Sammy Chemwey, Delegate number 388 from Western Province. I want to make an observation on Article 44 sub section (1), on freedom of religion and I want to seek clarification. The Article says every person has the right to freedom of conscience, religion, thought, belief and opinion, and also section 3 says every religious community is entitled at its own expense, to establish and run places of education and to provide religious instruction for persons. I want to seek clarification how that relates to Article 5, where there are sources of law and we have said that part of it comes from customary law and Islamic law, so that we are able to find out whether it is not possible for us to facilitate that all this religious freedom, conscience and all that, who can run institutions can also be provided under section 3 that they do not only run places of education, but are also able to establish Judicial Courts able also to run health institutions and able to run other things so that we are able to lift issues of religion and dicadimize between religion and culture and other things.

I am seeking clarification whether that is possible. I also wanted to submit to the Chairman, whether it is possible to consider Article 33, the right to life, whether it is possible for us instead of saying 'conception' be able to say, 'everyone has the right to life from fertilization to natural death'. Article 37, I also want to refer to Article 37. Yes, actually I think Honourable Delegates will understand why I said so. Article 37 is what I am making reference to. Looking at Article 3, to me it looks a bit ambiguous because it says that a child's best interests will actually be supreme, will be over and above and yet we know very well that a child can not have the actual understanding of everything and will conflict with his best interests. What are these best interests? Can we be able to be more clear, rather than leave it ambiguous so that it can create some problems.

I am also wondering about Article 36 on the older members of society, because we said that we would like to maintain our African culture and possibly be able to retain our older members in the family unit. Is there a possibility where people who are able or family members who to some degree are able to cater for the older members can have a rebate from taxation, so that we do not really have the burden of creating certain institutions and building institutions, but being able to keep the family together. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. Well I think before I ask the presenters to comment, maybe I should just give you some statistics on how the discussion went on. We have given an opportunity to seven Members of Parliament who are all men, we have given to thirteen men Delegates and eight lady Delegates, all of which if you look at the MP'S they are one third, and if you look at the ladies they are one third, so I think we have been very fair.

Prof. Yash Pal Ghai: Thank you very much Chairman. I am standing in for Commissioner Lethome who had to leave for some other business. I would like to make a general statement or comment before dealing with some specific issues. The way in which this Bill of Rights is drafted does not indicate under each right what the possible limitations are. Our present Constitution states the right and then under that same Article indicates the kinds of limitations that can be imposed on that right. We have followed a slightly different approach which has now become quite common. In Article 31, we have indicated that these rights that are being given can in certain circumstances and to a certain extent be limited or qualified. They can be qualified only to the extent that the limitation is reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom. It then mentions the factors that should be taken into account when limiting a Right.

Therefore, if I can take one complete example I think that was Honourable Madoka's point about the freedom to join Trade Unions and to strike, he is quite right that there are certain professions where the right to strike may need to be limited and even the right of association may be limited for reasons of security, public safety and so on. Therefore if the Government was to make a law which prohibited strikes among the Police or the Army, those in my view would be justified under section 31. The courts would be free to determine whether the limitation is justified, is reasonable and therefore some of the rights which you have been commenting on they may look as if they are completely unrestricted and unqualified, but the mechanism of Article 31 will enable Parliament and other law making bodies to restrict rights in the public interests. Ultimately it will be for the courts to decide whether the limitation is reasonable or not. I think that is a point you need to keep in mind because I can see that the way some of the rights are drafted if they are read truly on their own the without reference to 31, they may seem too be going too far. The effect of 31 is to give Parliament the authority to restrict and in that way, to reflect public opinion and public concerns. It

is therefore a way of balancing the right of individuals for example and the rights of the Community on the other hand. That is the general point I want to make.

Now, most specifically I think some of the points that had been made can be taken care of through drafting, and some clarification perhaps is required in view of what the Honourable Delegates have said. I did not make very detailed notes, but let me see if I can pick up certain issues that were raised. Some Honourable Delegates have said that there should be specific obligations on the State, that it is not enough to say that the elderly or the children have rights but we should indicate that there are obligations on the State. Indeed the Bill of Rights makes clear in a general provision that the State has the obligation to promote rights where rights are given. If you look at Article 30, it states that the State shall observe, respect, protect, promote and fulfill the rights and freedoms in the Bill of Rights. More specifically, it sets out the obligations of the State to promote legislation, to implement legislation and so on. Therefore most of these rights in some sense imply an obligation on the State to make sure that the rights become effective.

The question on 36 (4), whether we should rely upon African traditions of looking after the elderly, I would like to comment that those who recommended to us a provision like the one we have in 36 for the elderly made the point that it is true indeed that in our traditional systems, the elderly were looked after by the families and were respected members of the family. However, these traditions have broken down or are breaking down and the families are no longer able or even willing perhaps to look after the elderly and so to some extent, the responsibility must shift to the broader community and we certainly hope that this traditions will continue and the elderly will be respected and looked after by the children. However, it is not happening as commonly as it used to and this is a response to that break down in that system.

The point about Article 73 sub section 3, which refers to the obligation of the Chief Justice to provide rules for court proceedings, I think that is a fair point, we have had in the past; difficulty of access to courts because Chief Justices have not provided the rules. I think we perhaps need to clarify here that despite the absence of these rules, access to courts will be provided under the normal rules of procedural evidence. I think we need to draft that , just to make that clear because this has been a problem in the past. In some Commonwealth countries, the courts have actually said

that even in the absence of rules made by Chief Justice people can go to court to protect their rights and I think we need to make that clear.

There are a number of other points that have been made. I do not know whether we really have the time to go into that because the Steering Committee has to meet so we can set up the Welfare and Disciplinary Committee. I think what we will do as with other Committees, we will provide these notes of your comments to the Committee dealing with Human Rights and they will look at these questions in more detail. I do not really have time I am afraid to go into all the points that have been made. I just want to say as Commissioner Baraza said earlier that the comments we have received have been very interesting and I am personally very impressed with the diligence that the Delegates have read the document and have prepared their comments and I thank you very much for your statements. Thank you.

Hon. Delegate Mwangi: Thank you very much.

Speaker: Point of Order.

Hon. Delegate Mwangi: What is your point or order?

Hon. Delegate Mwai Gakuya: Mr. Chairman, my name is Mwai Gakuya, number 576. I would like to ask the Chair whether it practices discrimination to the observers in this Conference because they do not have stationery and in the weather like this, maybe you could look into their welfare of transport please. Thank you.

Hon. Delegate Mwangi: I am not taking any other point of order.

Hon. Delegate Sisika Moses: Please kindly I request you Chair. My name is Leng'ete ole Sisika, Delegate number 365. We have not exhausted the Bill of Rights. I am just putting a request to the Chair, that we be given one hour or two before we discuss tomorrow. It is a very important Article and we have not exhausted it. Therefore before we go to the next Agenda tomorrow, please give us one or two hours to discuss it. Thank you Chair.

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF
CHAPTER 5 – BILL OF HUMAN RIGHTS, 9th MAY 2003**

Presentation Of Draft Bill: Chapter 5 – Bill of Rights (Cont. of 8th May 2003)

The meeting started at 9.40 a.m.

Prof. Yash Pal Ghai: I call the meeting to order and request Ms. Milcah Yoga to say the prayers. Will you please all stand up for the prayers.

Hon. Delegate Milcah Yoga: Shall we pray.

Heavenly Father we thank you this morning, we glorify your name, we uplift your name above all other names. You are a gracious Lord, you are a loving Father, you have given us the opportunity to be alive this morning. Father, we cannot forget to say thank you. We are bringing our thanks to thee dear Lord. Yesterday you took us through, we glorify your name. We know that you are the Supreme lawmaker. We know that you are a caring God, wisdom and knowledge are hidden unto thee. How we pray dear Lord that this particular time, that you give us wisdom, so that whatever we are doing for our mother Kenya should be for the posterity of this nation. How we pray that you unite together in one spirit so that all the deliberations, all the decisions that we make Lord will be for the unity of this nation. I pray while believing and trusting in Jesus Christ our Lord and Saviour. Amen.

Prof. Yash Pal Ghai: Thank you. Could I ask whether there is any Delegate who has not taken the oath of office or not affirmed? If so, could they please just come there facing me so that I can administer the oath. I know that the Honourable Mr. Kituyi wants to affirm. Do the other two want to take the oath or affirm? Oath. Maybe I will administer the oath first. You have the copy of the oath. What I will ask you is to repeat after me. When I say, 'I' then you say 'I' and then you mention your names; after that you repeat after me. Please raise your hands like this. No, this is for those who are going to swear the oath. Okay. Say 'I' and then mention your names.

ADMINISTRATION OF OATH

Prof.. Yash Pal Ghai: ‘I ...

Response: ‘I...(they mention their names).....’

Prof. Yash Pal Ghai: Being appointed a Delegate to the National Constitutional Conference.

Response: ‘Being appointed a Delegate to the National Constitutional Conference.’

Prof. Yash Pal Ghai: Under the Constitution of Kenya Review Act

Response: Under the Constitution of Kenya Review Act

Prof. Yash Pal Ghai: Do solemnly declare and affirm

Response: ‘Do solemnly declare and affirm

Prof. Yash Pal Ghai: That I will faithfully and fully

Response: That I will faithfully and fully

Prof. Yash Pal Ghai: Impartially and to the best of my ability

Response: Impartially and to the best of my ability

Prof. Yash Pal Ghai: Discharge the task

Response: Discharge the task

Prof. Yash Pal Ghai: And perform the functions

Response: And perform the functions

Prof. Yash Pal Ghai: And exercise the powers devolving upon me by virtue of this appointment.

Response: And exercise the powers devolving upon me by virtue of this appointment.

Prof. Yash Pal Ghai: Without fear

Response: Without fear

Prof. Yash Pal Ghai: Favour

Response: Favour

Prof. Yash Pal Ghai: Bias

Response: Bias

Prof. Yash Pal Ghai: Affection

Response: Affection

Prof. Yash Pal Ghai: I will

Response: I will

Prof. Yash Pal Ghai: Or prejudice

Response: Or prejudice

Prof. Yash Pal Ghai: And to the end

Response: And to the end

Prof. Yash Pal Ghai: That in the exercise of the functions and powers as such Delegate

Response: That in the exercise of the functions and powers as such Delegates

Prof. Yash Pal Ghai: I shall at all times

Response: I shall at all times

Prof. Yash Pal Ghai: Be guided by the national interest.

Response: Guided by the national interest.

Prof. Yash Pal Ghai: So, help me God.

Response: So, help me God.

Prof. Yash Pal Ghai: Thank you. Please sign the oath and I welcome you formally to the Conference. Now we have the information. So please say 'I' and your names.

SWEARING OF THE OATH

Prof.. Yash Pal Ghai: 'I ...

Response: 'I...(they mention their names).....'

Prof. Yash Pal Ghai: Being appointed a Delegate to the National Constitutional Conference

Response: Being appointed a Delegate to the National Constitutional Conference

Prof. Yash Pal Ghai: Under the Constitution of Kenya Review Act

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Response: And perform the functions

Prof. Yash Pal Ghai: And exercise the powers devolving upon me by virtue of this appointment.

Response: And exercise the powers devolving upon me by virtue of this appointment.

Prof. Yash Pal Ghai: Without fear

Response: Without fear

Prof. Yash Pal Ghai: Favour

Response: Favour

Prof. Yash Pal Ghai: Bias

Response: Bias

Prof. Yash Pal Ghai: Affection

Response: Affection

Prof. Yash Pal Ghai: I will

Response: I will

Prof. Yash Pal Ghai: Or prejudice

Response: Or prejudice

Prof. Yash Pal Ghai: And to the end

Response: And to the end

Prof. Yash Pal Ghai: That in the exercise of the functions and powers as such Delegate

Response: That in the exercise of the functions and powers as such Delegate

Prof. Yash Pal Ghai: At all times

Response: At all times

Prof. Yash Pal Ghai: Be guided by the national interest.

Response: Be guided by the national interest.

Prof. Yash Pal Ghai: Thank you. Please sign that document. Thank you very much and welcome to the Conference.

Hon. Delegate Amos Kiumo: Mr. Chairman, my names are Amos Kiumo, Delegate 271, Chairman, Nyambene County Council. Mr. Chairman, I wish to propose that we alter the Order Paper to read; number 4 to come to replace number 2 in order of arrangement so that we can dispense with the issue of finances in order to settle the minds of most of our Delegates who have asked outstanding questions which have remained unanswered since we came here. We expect to have a lot of accountability in this House. Let that issue be settled once and for all, Mr. Chairman. I beg to be seconded.

Clapping from the delegates.

Hon. Delegate Muchai Lumatete: My number is 532, Mr. Chairman. My name is Lumatete Muchai. Delegate representing--

Prof. Yash Pal Ghai: I have not recognized you am sorry. Please sit down. Please sit down.

Hon. Delegate Muchai Lumatete: I am seconding, Mr. Chairman.

Prof. Yash Pal Ghai: I have not recognized you, I am going to make a statement.

Hon. Delegate Muchai Lumatete: Thank you.

Prof. Yash Pal Ghai: The steering committee this morning and yesterday had decided and I think this was announced to the Plenary that we will first constitute the committees, particularly the Committee on Privileges, Discipline and Welfare, and that we will discuss the question of finance in the afternoon.

Uproar from the delegates.

It is important to constitute the Committee on Privileges, Discipline and Welfare because that committee is dealing with the question of finance.

Uproar from the delegates.

I suggest that we constitute those committees that the members are asking to be constituted speedily. 278.

Hon. Delegate Peter Kang'ethe Nkoroi: Thank you, Mr. Chairman. Honourable Delegates, my names are Peter Kang'ethe Nkoroi, Delegate number 278 from Meru South. Now, Mr. Chairman, the Delegates here are demanding to be heard. Mr. Chairman, the issue of welfare and finance was to be solved in the first two or three days of the Conference. Mr. Chairman, this issue is overdue. It is irritating some people because we are making a Constitution, which is focused on accountability, transparency and good governance. This morning, Mr. Chairman, we have been informed that the Privileges, Discipline and Welfare Committee is being appointed by an individual and the rule number 48, Mr. Chairman....

Clapping from the delegates.

Rule number 48 Mr. Chairman, dictates that the Conference shall elect eight Delegates to the Privileges, Discipline and Welfare Committee and these people, Mr. Chairman, are not for the interest of only the Commissioners, they are for the interest or champion the interests of all the Delegates and all the participants in this Conference. Mr. Chairman, I beg to support the motion that we discuss this matter and we solve it once and for all. It may take us shorter time Mr. Chairman. Thank you.

Clapping from the delegates.

Prof. Yash Pal Ghai: I am going to give the floor to the Secretary to respond.

P.L.O Lumumba: Chair, kindly recognize me. If you look at the supplementary order paper, I believe the Chairman was going to announce that as we are sitting today having received names

from the Delegates, he was tabling the names proposed by you Delegates to have the steering committee constitute the Media Advisory Committee and the Privileges, Discipline and Welfare Committee. Once your representatives are constituted by yourself now, that committee meets for briefing by the Finance Committee of the Commission at lunch time because the Act makes the Finance Committee and the Secretariat the custodians of the funds which are to be administered in keeping with the Audit and Exchequer Act and will brief that committee so that they are in a position in the afternoon to come from a point of knowledge to tell you what it is that is happening. One would have thought that you need the information. My technical staff, my Deputy Secretary of Finance, my Procurement officers and all my officers are preparing appropriate documents to be given to this committee so that they address you from a position of information. I would have thought that that is how you do things. If you Delegates, and permit me to say, ambush us now and demand that we discuss finances now, we will not give you information supported with documents. You need documents. I rest my case.

Uproar from Delegates.

Prof. Yash Pal Ghai: 317 please.

Hon. Delegate John K. Waitiki: Thank you, Mr. Chairman. My name is Waitiki, Delegate 317, from Thika. All what the Honourable Delegates are saying, 'fine, we've been here and this is almost the end of second week.' The issue of administration is very very important. You cannot have a vehicle without servicing it. What we are demanding now is, before we conduct any further business, let's resolve this simple matter of administration. Thank you, Mr. Chairman.

Prof. Yash Pal Ghai: I would plead with the Honourable Delegates to ponder over the points made by the Secretary. Please listen to me. Order.....order! In a Conference as large as this one is, things take time to constitute. We want to make sure that we have all the committees, the representatives that have been identified by the Delegates and have the approval and support. This process can take a lot of time. We want to be democratic and participatory but that does not mean that we have to have many confrontations before the Steering Committee can come to this plenary with the list of names, which you ultimately approved.

We have had to do other business as well and I don't think that there has been undue delay in the establishment of this committee. Today, we want to present you with the list of names, which we have composed after very wide consultations in two lengthy meetings of the Steering Committee and we really need to follow these procedures if this Conference is to proceed in a proper manner. So, I would like to plead with you that the Secretary should read the proposed membership of the two Committees that we agree now on their composition and then proceed with the work of this Conference. The Finance, the Disciplinary and the Privileges Committee should meet with the Secretary as he has suggested at lunch time. Then after that we can have a proper discussion of the issues relating to finance and administration. 368

Hon. Delegate Joel Kipyegon Sang: Honourable Chairman, you and the Secretary of the Commission are missing the whole point. Did it have to take two weeks to realize, Sir, that we need a Privileges, Discipline and Welfare Committee and also the Media Committee and there has been outstanding issues? I raised a motion and you promised us an answer the following day. Then we have not received an answer and you expect us to believe that we are being transparent.

Secondly, we are making a Constitution that is supposed to make the leaders of Kenya accountable to all Kenyans and you are being accountable when you are making this. Can injustice give birth to justice? It is impossible. Could you please, could you please, in the name of transparency and accountability listen to the Delegates. We have been living under very difficult conditions. We do not even understand what we are supposed to get here and there. Could you please, in the name of understanding, so that our hearts become free and we deal with the business of the Constitution with a clean heart, address these issues. You are trying to evade the issues. Thank you.

Clapping from the delegates.

Prof. Yash Pal Ghai: All I am asking for is a few hours so that we compose these committees, the Committee is properly briefed, the Committee and the Secretary can then leave Honorable Delegates and we can have a proper discussion. It is not too much to ask that we wait for a couple of hours so that we carry our work properly. 301

Hon. Delegate George Ndatho: Mr. Chairman, the Delegates have moved a motion, which was last week proposed and now we want to go to this committee. The committee should not tell us that we have consulted so and so from various places in order to give us its members. I would like to propose, regulation number 48 says that 8 members which compose of the Privileges and Welfare Committee are supposed to be elected by this Conference. Can we do that now, if it has not been done such that you do not come and tell us, 'we have nominated so and so.'

Prof. Yash Pal Ghai: I am going to call on Delegate 223 and then I will make a ruling on this suggestion that we have received.

Hon. Delegate Francis Ole Kaparo: Mr. Chairman, I am Delegate 223, Francis Ole Kaparo, Speaker of the National Assembly. Mr. Chairman, I rise to appeal to fellow Delegates, to appeal to each one of us, to proceed with this issue with absolute care and patriotism. I do understand that the Honourable Delegates requested for the setting up of a committee to look at their privileges and welfare. I do look at the Order Paper and I notice Mr. Chairman, that it does contain that specific item - setting up of a Privileges and Welfare Committee. I understand that on an issue like this, privileges and finance, it is absolutely impossible to transact that business without requisite information on plenary. I do understand that you, Mr. Chairman, has made a personal commitment that this afternoon, after this committee has been constituted. This issue will be discussed. I therefore urge my fellow Delegates, the whole of Kenya is looking at us and at this very moment every Kenyan is hearing what you are saying. I hate to feel that the impression the country will get out of this all, is that we keep our own privileges and interests above that of the nation. I think it is our duty and we owe it to Kenya to transact to that business that, in the first place, brought us here, which is to seriously review the Constitution of Kenya. I believe that is the primary reason why we came here. Everything else is subsidiary to that initial obligation. So, I plead that, let the Chairman--

Uproar from the Delegates.

Prof. Yash Pal Ghai: Order please! Let the Speaker finish please.

Hon. Delegate Francis Ole Kaparo: Mr. Chairman, I am entitled to speak as a Delegate and I am entitled to speak as a Kenyan. Mr. Chairman, can we set up this committee and then make this presentation in the afternoon?

Clapping from the delegates.

Prof. Yash Pal Ghai: I would like to propose that we set up the committees now. I would like to ask the Secretary to read the names, which have been put forward by the Steering Committee for the consideration of this House. So, Mr. Secretary will you please--

Clapping from the delegates.

P.L.O. Lumumba: Thank you very much. These names were proposed by yourselves. I shall now proceed to read them.

1. Baldip Singh Rihal - Professional Organizations.
2. Salim Ibrahim - Nairobi Province
3. Hezekiah Waithanje Minjire - Central Province.
4. Abdullahi Haji Mohammed - North Eastern Province.
5. Francis Wangara - Trade unions.
6. Yusuf Mahmud Abubakar - Coast Province.
7. Miriam Muto Malogo - Special interests.

From the Commission, in terms of the regulations:

8. Abida Ali Aroni - Commissioner
9. Bishop Bernard Njoroge Kariuki - Commissioner
10. Dr. Mosonik Arap Korir - Commissioner
11. Kamla Sikand - Co-opted
12. Shakeel Shabbir - Co-opted
13. Joel Kipyegon Sang - Co-opted
14. Francis Xavier Ole Kaparo

Prof. Yash Pal Ghai: 390.

Honorable Delegate Kellan Khaoma Wavomba: Mr. Chairman, my names are Kellan Khaoma Wavomba, Delegate 390 from Bungoma. Mr. Chairman, I want to say this with a lot of regrets, that we appointed a steering committee, you never altered anything, they are the way we gave you. We have given you names of our welfare officers from respective provinces and we realize that you have changed. The same names are not the way we gave you. Mr. Chairman, can you please give us the right names for good representation. Thank you.

Prof. Yash Pal Ghai: We have not changed the names. These were the names that were given to us. We had to set up two committees, we had names for the Welfare and Privileges Committee and we had names for the Media Advisory Committee. We got a number of nominations and we had to accommodate them all and the way to do that was to distribute these names between these two committees. So all the names that the Secretary has read to you did come from the Delegates and names that we shall read to you, of the media committee, also are names that came from the Delegates. I propose that—

(Uproar from the Delegates)

Prof. Yash Pal Ghai: 178

Hon. Delegate Rotino Philip Ruto: Mr. Chairman, thank you very much. I think Mr. Chairman, the names you have read are not representatives of all the provinces. Can the names be read per province per province? Because those were the names that we gave?

Hon. Delegate Osoi Kamwende: Thank you Mr. Chairman. Mr. Chairman, with all due respect to the Chair and due respect to these Honourable Delegates. The Commission has made the Delegates to appear like devils in the hands of the public because the Press is saying everything about the Delegate. We cannot walk freely in the streets. Because we have been made to look like hungry people who have come to look for money here. This is because the Commission is not transparent. I want to ask this: Right now, the Honourable Secretary to the Commission has

just said that, if we don't form a welfare committee, then we will not be given sufficient information supported with documents. With all due respect, what document is the Secretary looking for, two weeks after the Conference has started, which he never had? Why are you ambushing the Conference and making us to appear as if we are not people of principle? As if we don't deserve respect because you don't want to be transparent? This issue would have been solved, long forgotten and the Conference goes on. Thank you.

Clapping from the Delegates.

Prof. Yash Pal Ghai: The Secretary has the floor please.

P.L.O. Lumumba: Excuse me, the Chairman has given me the floor. I refer Delegates to page number 30 of the document which are the regulations of this Conference. I refer you to page 30, regulation 48. That regulations says, the Privileges, Discipline and Welfare Committee shall consist of three Commissioners. It also says that you shall eight Delegates elected from the Conference. If you understand the direction that the Chairman gave you, there are different categories of Delegates. There are those who are Parliamentarians, there are persons with disability, there are women, there are youth, there are other persons. In other words, the categories are in excess of the eight slots. Being in excess of the eight slots, it follows therefore, that if you went provincial you would have more Delegates and further, if you went to all the categories, you would have even more Delegates. The net effect therefore, is that we must ask ourselves, how do we, with fewer seats, distribute them? And the proposal that we received at the Steering Committee is as follows. That we have some of the provinces represented in the privileges committee and some of the categories in the Privileges Committees and the provinces that are not represented in the Privileges Committee be represented in the Media Advisory Committee so that all that is taken on board. That is what we are trying to do. Even if the Delegates were to be allowed to elect representatives to the Privileges Committee, you would find yourselves in the same problem, that you have fewer seats to fill, than the categories that actually exist. That is what must be appreciated and if you appreciate that, the question that the Chair is therefore putting to you, having done this kind of balancing act, if you further allowed the Chair to allow me to read the list of the Media Advisory Committee, you would be able to appreciate whether the balance is right.

Prof. Yash Pal Ghai: May be with that explanation, I will ask the Secretary to read the list of the proposed members of the Media Advisory Committee.

P.L.O. Lumumba: These are the proposed names of the Media Advisory Committee.

1. Hon. Delegate Sylvester C.M. Wafula. - Professional Organizations
2. Hon. Delegate David Marcos Rakamba - Nyanza
3. Hon. Delegate Awillie David Erulu - Western
4. Hon. Delegate Michael Oliewo - Political Parties
5. Hon. Delegate Nkoroi Peter Kang'ethe - Eastern Province

From the Commission in terms of the rules;

6. Commissioner Kavetsa Adagala
7. Commissioner Salome Muigai.
8. Commissioner Abubakar Zein Abubakar.
9. Hon. Delegate Rose Lukalo - NGOs
10. Hon. Delegate Mustafa Ali - Rift Valley
11. Hon. Delegate Mutahi Kagwe - Co-opted from Parliament

Prof. Yash Pal Ghai: We now have the fourth list suggested by the steering committee of the two committees. Do members approve this list of members of the two committees? First, I will deal with the committee on Discipline and Welfare and I would ask the Secretary to read the names once again. Then I am going to ask if the Delegates approve of this list or if you have any suggestions for change. The Secretary will you please read the names again.

P.L.O. Lumumba: With the Chair's permission, I am proceeding to read the list again.

1. Hon. Delegate Baldip Singh Rihal - Professional Organizations.
2. Hon. Delegate Salim Ibrahim - Nairobi Province
3. Hon. Delegate Hezekiah Waithanje Minjire - Central Province.
4. Hon. Delegate Abdullahi Haji Mohammed - North Eastern Province.

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|-----------------------------------------|---|-------------------|
| 5. Hon. Delegate Francis Wangara | - | Trade unions. |
| 6. Hon. Delegate Yusuf Mahmoud Abubakar | - | Coast Province. |
| 7. Hon. Delegate Miriam Muto Malogo | - | Special interests |

From the Commission;

- | | | |
|---------------------------------------------|---|--------------|
| 8. Abida Ali Aroni | - | Commissioner |
| 9. Bishop Bernard Njoroge Kariuki | - | Commissioner |
| 10. Dr. Mosenik Arap Korir | - | Commissioner |
| 11. Hon. Delegate Kamla Sikand | - | Co-opted |
| 12. Hon. Delegate Shakeel Shabbir | - | Co-opted |
| 13. Hon. Delegate Joel Kipyegon Sang | - | Co-opted |
| 14. Hon. Delegate Francis Xavier Ole Kaparo | | |

Prof. Yash Pal Ghai: 436.

Hon. Delegate Mitere Francis Onyango: Mr. Chairman, through your Chair, I would like to express some few comments. The first and foremost is that, you have dictated to this Conference and because of that, you have actually gone round and round reading names and yet we have asked a simple question. That we need our welfare to be established and discuss how much we are getting. Look at the point this way, this Conference Mr. Chairman needs to be systematized before the system systemize P.L.O. Why I am saying this Mr. Chairman is, why do we dwell, our image has been portrayed in this Kenya. We have been portrayed that we wanted large money and we have asked for a simple remuneration. It is not a question--

Prof. Yash Pal Ghai: It is not a point of order, I am afraid.

Hon. Delegate Francis Ng'ang'a: It is a point of order Mr. Chairman.

Prof. Yash Pal Ghai: Sorry, it is not a point of order. You can put it down. I recognize 500.

Hon. Delegate Kamla Sikand: Mr. Chairman, I am Kamla Sikand Delegate number 500. I see my name has been put in for that committee but the way the Delegates are fighting over the provinces, I believe I am a Kenyan and I request every Delegate to behave here as a Kenyan and don't think of my province, my district. You are doing a very, very serious document for the country, not for your particular district or Province. I, Kamla Sikand, am ready to give up my seat for any province or anybody who feels they have been neglected.

Clapping from the delegates.

Prof. Yash Pal Ghai: 331

Hon. Delegate Isaack Kipkoskei Bungei: Thank you, Mr. Chairman. My name is Isaack Kipkoskei Bungei Delegate number 331. First, Mr. Chairman, I think you are treating us unfairly. The Delegate who has just arrived has not even gone to where she is sitting. We have been raising our numbers here since morning. I don't know what is happening. Secondly, Mr. Chairman, I think you are being held at ransom. There are some things, what we just want is what was allocated to us be discussed here. Nothing more. The Press has taken it as if we are requesting for a lot of money. Mr. Chairman, I agree with Hon. Delegate Mr. Kaparo, but Mr. Chairman, in the afternoon, some Delegates will be paid. Most of them will not be here. We are being woken up by call girls at the hotel. I don't think Ole Kaparo you have experienced that. We have problems.

Clapping from the delegates.

Hon. Delegate Isaack Kipkoskei Bungei: Mr. Chairman, what we are just requesting is that we discuss what was allocated to us, nothing more. Thank you Mr. Chairman.

Prof. Yash Pal Ghai: The Secretary has a suggestion.

P.L.O. Lumumba: Let me have the floor. Let us understand and I say this firmly and in all seriousness. We have money given to us by the Government of the Republic of Kenya. That money is available for administration by the Commission. The Commission having received the

money has incurred expenditure, which is founded on a budget, which budget was discussed by the Finance Committee of the Commission, which budget was tabled before the plenary session of the Commission; which budget was taken to the Ministry of Finance, 'which budget was seen by the Auditor and Controller General; which budget was then the basis of the release to us on the released works on the 25th day of April, of the sum of Kshs. 300 Million, which budget was the basis of all the expenditure under different heads. At the end of the day Delegates, we will be required as a Commission to comply with the law. At the end of the exercise, Honourable Delegates, I and I alone will be required to appear at the Public Accounts Committee to explain to them how public funds were dealt with. What we are requesting Delegates, is this, having done our budget, having constituted this Commission committee, it is only fair to the members of that committee that we tell you the following as I will, and I will tell you what I am going to tell the members of that committee. We will give them a budget, which reads as follows; that in order to have this Conference up to the 6th day of June our budget reads Kshs. 390,000,000. That budget of Kshs.390, 000,000 covers the expenses relating to the Conference, which covers many items including the following: the press advertisements that you have seen, the press conference activities that you have seen, all the activities. If you look at that, I'm going to tell that Committee as follows - if the point of orders could kindly wait.

I'm going to tell them that in any financial organization this is what you do: you take the 390,000,000 multiply by the number of days that the Conference is going to take, and you will find that in allocating every Delegate to spend so much money that does not mean that, that money is available to the Delegates. It means that some of it goes to administration, it means that some of it goes to documentation, it means that some of it goes to the printing of the material that you have. I'm going to tell the members of that Conferences as follows: that the only cash money available for distribution to you is Kshs.5000. You deny the follow Delegates Kshs.2500, I'm being transparent if I may be allowed the Chairman has given me the floor. Kshs.2500 is paid as daily allowance to the non-resident district Delegates, Ksh.2500 is paid to the hotels on the basis of negotiated rates, which are lower than their normal rates because of the bulk negotiation. Those Delegates who are not resident they have to have transparent comfort coming here, because they need to be here on time get an additional Ksh.2500, 5000 per day. If Delegates decide at this forum that the hotels which were selected for them by the Commission after

thorough negotiations are not good hotels what they would be entitled to would be Ksh.5000 and this is what this could mean:

- 1) That the Public Accounts Committee will be asking me, you Lumumba on what basis were you giving Delegates 5000 shillings on a daily bases without receipts, they would be asking me why were you keeping your Delegates in Kayole? And at a practical level this is what would happen. We would not have a Conference, because with these rains that are raining how are you going to come from Kayole? The insurance cover that we have for you tells the insurer that you live in secure places, how will I take control of my Delegates?

I beg you to listen to me, to listen to me and understand the pain that we are going through.

Hon. Delegates: Noise.

Prof. Yash Pal Ghai: Thank you very much. I hope with that explanation, the members, Honourable Delegates will proceed to the Constitution of these Committees so that we can conduct our business in on a proper way. So I would like to ask the Delegates, if they agree with the list of members of the Discipline, Privileges, and Welfare committee. Are there the Delegates who oppose the list? If you oppose please say, “nay”.

Applause

Those who approve the list say “aye”.

Applause

Those who oppose the list say “nay”.

Applause

Prof. Yash Pal Ghai: Discipline, Privileges and Welfare Committee, is constituted. Thank you very much indeed. I will now ask the Secretary to read the names of the Media Advisory Committee and then later I ask your approval.

P.L.O Lumumba: With the Chair's permission, I know read the list on the Media Advisory Committee.

- | | | |
|--------------------------------|---|-----------------------------|
| 1. Sylvester Wafula | - | Professional Organizations. |
| 2. David Markos Rakamba | - | Nyanza Province. |
| 3. Awillie David Lidbury Erulu | - | Western Province. |
| 4. Michael Oliewo | - | Political Parties. |
| 5. Nkoroi Peter Kang'ethe | - | Eastern Province. |
| 6. Kavetsa Adagala | - | Commissioner. |
| 7. Salome Muigai | - | Commissioner. |
| 8. Abubakar Zein Abubakar | - | Commissioner. |
| 9. Rose Lukalo | - | NGO. |
| 10. Mustafa Ali | - | Rift Valley Province. |
| 11. Mutahi Kagwe | - | Parliament. |

Prof. Yash Pal Ghai: Those who approve the list say "aye".

Applause

Prof. Yash Pal Ghai: Those who oppose the list say "Nay". The "Aye" have it. Thank you very much indeed. So the two Committees are constituted and the Secretary will inform us how he wants to have a meeting with the vested Committees.

P.L.O. Lumumba: At exactly 12:00 noon in the Steering Committee tent the Privileges Committee is requested to convene (Inaudible) by the Secretariat of the Conference, that is the Commission. Thank you.

Prof. Yash Pal Ghai: Thank you very much indeed. We had agreed yesterday following a request from the Honourable Delegates that we set aside one hour this morning for the continuation of discussion on the Bill of Rights. So I would now propose that we ask Honourable Haji and Mr. Ole Kina to take the Chair, and we will continue with the discussion we began yesterday. We will allow one hour for that discussion then we will break for tea and in the

afternoon. As you know the program has provided for discussion (?) in the administration. Thank you very much indeed.

An Hon. Delegate: Prof. a timekeeper for us?

PRESENTATION OF DRAFT BILL: CHAPTER 5 – BILL OF RIGHTS (Cont. of debate)

Hon. Delegate Yusuf Haji: Mr. Chairman, distinguished Delegates, I would like to thank you this morning for the cooperation you gave to me yesterday, and I will continue with the same arrangement as we departed yesterday. You will recall we ended up here. So we are now going to start on my right, and I will also recognize 406. I just give him a point of order.

Hon. Delegate Michael Senget: Mr. Chairman my name is Michael Senget from Marakwet. Mr. Chairman I'm very concerned that if the trend continues where you are going for people with light skin-- I'm from Marakwet, I'm here, I'm supposed to be heard --

Hon. Delegate Yusuf Haji: I overrule you because I don't see you as Marakwet neither do I see anybody by his or her tribe. I see him or her by their number so sit down.

Applause

Hon. Delegate Yusuf Haji: -- don't waste our time. Okay go ahead please.

Hon. Delegate Shakeel Shabbir: Mr. Chairman: Order, order. Mr. Chairman, fellow Delegates I feel disturbed about the way I think yesterday, one Delegate brought up this issue, it seems to be the way you have started again, under the circumstances I do not wish to speak because I have been suppressed. So I would like to know to pass this to the gentleman who has made so much noise.

Interjection: No no.

Applause

Hon. Delegate Shakeel Shabbir: Sorry Chairman I shall proceed.

An Hon. Delegate: Point of order.

Hon. Haji Yusuf: May I take point of a order from Honourable Shikuku.

Hon. Delegate. Martin Shikuku: Thank you very much Mr. Chairman I'm almost sick, we can't conduct this meeting the way we are doing. First and foremost, he is completely out of order to refer to the Honourable Members' complaint as noise, and the Chair should rule that he withdraws that. Secondly Mr. Chairman, you have, and apologize, you have the power to tell somebody, " that is not point of order would you please resume your sit", but you don't shout at him "sit down". And the Chairman, he should know we are civilized people here, forget having been a PC.

Hon. Haji Yusuf: Point noted.

Applause

Hon. Delegate Yusuf Haji: Okay, can we proceed? Honourable Delegate Shakeel you are wasting a lot of time and we have very little time allocated for this session. Thank you.

Hon. Delegate Shakeel Shabbir: Thank you, I would like to mention section no. 35. Under section 35 Sir, the issue of widows. I speak for Kisumu district my name is Shakeel Shabbir 406. The issue of the rights of widows, you know there are polygamists almost all over Kenya. Widows can be or are in certain cultures disowned and do not have any rights, those ones who are not married under the traditional marriages. So I would like to bring up that issue that should be covered.

On the issue of section no. 34, item no. 4 again; women and men have equal rights to inheritance. However as I noted, 31.4 withdraws that right for the Islamic culture. I would like the words to -- provisions of this chapter on equality “shall” to be changed to “may.

The other issue is Sir, chapter 61. No. 61 is on water, under the present circumstances right know water is being privatized. So water is being taken away as a right or basic right, it is privatized. And I think that we should cover these natural resources not to be privatized to be given to the few rich, that water should be available to every single Kenyan no matter or her/his financial status.

Finally, under section 67 Sir. We think that restitution should be a way of punishment. There are certain times that restitution is made in the most equitable way a punishment it doesn't necessarily mean that it is the only way, but restitution in certain cultures and certain auditions has been the most equitable way of punishment. With that Sir, I would like to end here. Thank you very much.

Hon. Delegate Yusuf Haji: Number 306.

Hon. Delegate Christine Ngari: Honourable Chair, Honourable Delegates, my names are Christine Ngari Delegate 306 from Kirinyaga. I want to refer you to section 38 number 4; women and men are entitled to equal rights in the marriage during the marriage, and at the dissolution of their marriage. And also I want to join it with number 3 section 35 which reads; “women and men have equal rights to inherit have access, and control of property”. These statements are very good to our women and men, that according to the laws that had been made, and especially when people are in marriage, we have a way that indicates the property belongs to so and so. Currently if it is the title deed, normally it bears the name of one person within the family. We would like to have this regulation enforced by the Constitution, whereby, definite measures will be put in place to protect both spouses. If it is property, if it possible to have both names, so that in the case of succession none of the spouses will be disadvantaged. The current system of going to court is very cumbersome for akina Wanjiku and Njoroge down in the rural areas. So if measures are put in place that will assist in this one it would be very, very helpful.

Again for the women and men in section 35 number 3; we are told that girls, boys, men, and women are supposed to inherit from their parents. One of the Honourable Delegates yesterday queried whether women would also inherit, and men will inherit from the parent of the opposite sex? But we are saying that both women and girls can inherit from their parents, so if that one could be added there it would be useful rather than just leaving it as inherit.

So we are asking the Constitution to make the succession of the law, that it qualifies both women and men to process posses, to own property within marriage, -- to be made easier. Thank you Sir.

Hon. Delegate Yusuf Haji: Thank you very much, I do recognize 320.

Hon. Delegate Kiriro Wa Ngugi: Thank you Mr. Chairman, my name is Kiriro Wa Ngugi Delegate number 320 from Kiambu district. I want to make a general comment on the voice of The Bill of Rights in the Draft. I feel very strongly that the overall voice of this otherwise comprehensive draft is both foreign and unrealistic. When I say foreign I mean for example; wherever and whenever the so-called international norms are in conflict with African culture, this Draft subjugates us to those so-called norms. Subsequently when we get to the Committee stage where people here who have already internalized African culture and will protect it, we will find difficulty in accepting the foreign in puts that are depicted in this entire chapter. I can give an example: whereas there in west they find it useful for the state to carry a big stick for irresponsible parents, the thought of me having to be beaten up by the state, having my child taken to an institution because I am unable-- That kind of thought is repugnant to African thinking, yet here the underlying ethos is that we are so irresponsible we need the state to take care of our children.

Second example; whenever and wherever the African culture is in conflict with the elitist thoughts it is our culture that is told to shut up, that is my pride.

Again the final point, on socialism there was a suggestion- an Honourable Delegate ventured to suggest that after you are 75 years you are the baby of the state and therefore you should be taken care of. We should be careful, because nobody owes you lunch. The whole process of socialism is not that the state owes you anything. The basis is that in the full spectrum since you

are the child and then you die and you go to the grave at age 90 that you are not a contributor. Even as we give free primary education this is an investment on that child so that he/she will contribute. Under the full spectrum of time each Kenyan will make a contribution to the state. We do not-- nobody owes anyone lunch. We should not create a Constitution that seems to suggest that every time there is a new problem you go and take the state to court.

Mr. Chairman, the general debate, that is the first stage of this Conference, has missed this general overview of what the document talks about. That is why I'm deliberately not going to the verse and chapter because I would like to encourage the Delegates, first and foremost to internalize the overall view of each chapter, and particularly the entire document. Because it is only after we have done that, that we are able to deal with these document effectively. I encourage the Delegates; the primary duty of these Delegates is to develop a consensus and to bond politically, so that we precipitate the foundational philosophy. We want to live together how can we do that?

While we have agreed on the foundational of philosophy the rest is technical work. And it is very important Mr. Chairman that we dwell on the foundational that will guide us to accepting or rejecting specific provisions in the Constitution. Thank you very much.

Hon. Delegate Haji Yusuf: Thank you very much. 83 please.

Hon. Delegate Wangari Mathaai: Thank you Chair, I would like to contribute in this Bill of Rights especially with respect to the environment as follows;

- On 54 (2), I think it is very important for us to say that a living organism, we had C and D--excuse me. A living organism, a person who owns it, we are talking about ownership in 54, so a person who owns a living organism must treat it with care and respect appropriate to living beings and in cohabitants of Kenya. In other words they too have a right.
- In D which says that a person who owns a part of Kenya must respect and care for it, and conserve and protect it, and any indigenous plants and animals on it as a trustee for the

present and future generations. In 63 (1) (c) Mr. Chairman I want to draw attention to the fact that we need to entrench our Constitution the need to educate our children about the environment. So I would like to say that we have a right to environmental education and free access. We say that we have free access but I think the best is we should have a right to environmental education and free access.

- On 75, we are talking about the interpretation of the Bill of Rights, we want to say that on one: when interpreting the Bill of Rights, a Court, Tribunal or forum shall promote the values that underlie an open and democratic society based on human dignity, -- and freedom. We want to add that they shall recognize the importance of considering the interests of other species, aspects of the environment, and future generations, in ensuring that each has the freedom to play its role in the on going evolution of life. These concepts Mr. Chairman are extremely important; they are part of evolving the understanding that these other forms of life are very important to our own survival.
- And 75,2 I want to also draw attention to the fact that we say when interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum shall promote in D--
- In D, I want to add that: they recognize the fundamental importance of maintaining the ecological balance and harmonious relationship between human beings and the environment.
- In 73 C, I want to add something small there, The Bill of Rights does not deny the existence of any other rights of freedoms that are recognized or conferred by common law, customary law or legislation. We add, which we think is very important, unless they are inconsistent with The Bill of Rights.

Thank you very much Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. Delegate number 511.

Hon. Delegate Ruth Kibiti: Delegate No.511.Thank you very much Hon. Chairman. My name is Ruth Kibiti coming from the Women’s Organization and I want to make contribution to the following Sections.

Mr. Chairman, I am not a very fluent Kiswahili speaker but I know that, the little I know about Kiswahili is that ‘mkosa mila ni mtumwa’. This Draft Constitution Mr. Chairman, has not given us cultural conservation and observers adequate cover and adequate room to be able to preserve our cultural heritage, Mr. Chairman. I am looking at Article 39, the family. Mr. Chairman, I want to propose that when we leave the family as naked as it is, remember it is the corner stone for our socialization and I therefore propose that the State shall recognize the African traditional family as the natural fundamental unit. Mr. Chairman, the African tradition of family has put in place enough social network and enough socialization units to enable us as an African State to be able to highlight our positive values. Any time this particular section talks about culture, it is looking at culture from the negative perspective. Can we also highlight the positive aspects of our culture?

Mr. Chairman, I also still want to move down to Article 38 sub-Section 5 (a). Mr. Chairman, when we talk about marriages, we should not forget that the African socio-cultural systems also have a system of marriage arrangements, which would form the basis for customary marriage when eventually it is enacted in Parliament. So Mr. Chairman, I want to propose that under (a) we say marriages concluded under not any traditions, but under Kenyan African tradition. Mr. Chairman that will also give us room to provide customary codes for regulating the customary marriages. Mr. Chairman, I want to move on and look at the section on language and culture. Mr. Chairman, language is a sub-set of culture. Language is a tool of culture and therefore Mr. Chairman, I want to propose that section 53 (a) reads as culture and language and Mr. Chairman, I want also to move at that particular position that there is need for culture to be given an upper hand. That section, only to take care of language and does not provide enough room for the preservation of culture. At that position Mr. Chairman, I wish that there is mechanism which is put in place to introduce some aspect of National Cultural Heritage and conservation. Somewhere to take care of our moveable cultural and immovable cultural materials.

Mr. Chairman I want to also move to Article 52, Refugees and asylum. Mr. Chairman, this is the right moment to talk about refugees and asylum. But I also want to move that we should include under that Section, refugees, asylum seekers and internally displaced persons. That is a problem we experience on an everyday basis. It is there now and we need to find a mechanism of taking care of it.

Mr. Chairman, I also want to move a little bit more and propose that when we talk about the environment, we should also find some mechanisms of in-building the right to protect environmental space which is associated with shrines and which is also associated with cultural needs like for example environmental shrines that communities first valued for purposes in interacting with their traditional deities. Thank you very much Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 237.

Hon. Delegate Onotto Joshua Jilo: Thank you very much Hon. Chair. At last I have been accorded the chance to make my comments. May I first of all take this opportunity to thank all the Commissioners for the commendable job they have done to bring up this Draft Constitution.

Secondly may I also thank His Excellency the President for addressing the issue of minority in his speech. He said in his speech that the Constitution which we are drafting now or we are writing should protect the rights of the minority and for those remarks, I pay special tribute to the President.

May I now comment on some sections? Chapter 5 Article 34 (3) which states, ‘despite clause one that State may take legislative and other measures designed to benefit individuals or groups who are disadvantaged whether or not as a result of past discrimination but any such measure shall’ – and then it continues. I propose that this section instead of using the word ‘may’ should be ‘shall’ so that it gives the Government commitment to see that these disadvantaged groups, the groups which have been forgotten not by sheer commitment but the government maybe wanted to forget but it just happened because these groups maybe could not give themselves to appear within the other communities that they should be seen. So, this section should address the forgotten groups and the minorities.

Secondly, I would like to address the section Fifty-Five Chapter 5 sub-Section 2 (d), which is on Labour Relations, which states, 'every worker has the right to strike' and it stopped there. I beg to propose that this section should include the following: 'to strike without loss of the employment and remuneration'. If the employer is in breach of agreement, this one is in relation with what happened last year, the year 2002, where the past regime had agreed to pay the teachers the five phase and then they voluntarily broke that agreement and then when the teachers went on strike, the government decided not to pay the teachers for the days that they were on strike and they also decided not to send the contribution or the Union dues to their Union. So, if this change is put into that Section, it will give the Parliament to repeal the Section in the Trade Disputes Act, which states that 'when an employee goes on strike, he doesn't receive his remuneration'. So, that is my contribution on that Section.

Then, on Article Forty-Four 5 (c) observance of a religious day of rest. Here I commend the Commission for having put in that Section. I remember the case of a DO in a District in Nyanza where because of going to worship God on Saturday, this DO was interdicted. So, I feel that this Section will cover the SDA's very well. Thank you very much Mr. Chairman for according me that.

Hon. Delegate Yusuf Haji: Thank you very much indeed. I now recognize 603. Take the microphone please.

Hon. Delegate Winston Ogola Adhiambo: Delegate No. 603. Thank you very much. I had only a few comments to raise on this issue of the Bill of Rights. My name is Winston Ogola Adhiambo, Founder National Chairman of Federal Party of Kenya and founder of Pharisian philosophy. I came as a representative of a Political Party.

Hon. Delegate Yusuf Haji: Thank you very much.

Hon. Delegate Winston Ogola Adhiambo: The few points are these:

One, On Education: The free Primary education and others. I was thinking that we should make an amendment there so that we have free education. That education should be provided freely in public institutions of learning starting from Nursery up to post University if there is something like that.

(Laughter)

The basic idea why I am saying this is, because education is the medicine for disease number one which inflicts all of us and that disease is ignorance. It is what has been happening even in this Conference.

(Laughter)

Hon. Delegate Yusuf Haji: Yes

All the problems which we have had here is purely due to ignorance not due to badness of any type but ignorance, people misunderstanding each other. So, I see it as a very important thing and then;

Secondly, education is for the Nation, the way I see it because being a National issue it should not be made as if it is a family affair so that the parents are given high prices to pay and yet the child or his education is going to be useful to all of us because you find most people here or the most of the big people or the rich people, by the time they are really assisting others, their parents who had paid for their education are gone proving that education is a National issue which should not be given, the way it is being given to a few people.

Thirdly, the right of free medical health: The medical health or the personal health of everybody should be catered for by the Government which means the amendment which I wanted or I was requesting to be put there in Government hospitals everybody should just be treated freely. Why should we pay? In fact there is no such thing as freely. But these people helping in the way of taxes, in the way of everything and so the Government gets money for these things everyday or all the time. I think this is justified by the fact, with me I have a lot of years, almost approaching seventy, so I lived for quite a bit of the part of the colonial times. These things during the

colonial times, health and education was being paid for by the Government. So after maybe forty of so years, honestly it should not be so improved because it is not free. But we are only saying that it should be there at the Government's expense.

The other part which I feel we should also look into is the right of the very low income groups should also be looked into just like the disabled or persons with disabilities.

Then on the side of inheritance especially as relates to women: You all know that it has always been a problem. It is a problem in that, the woman has the possibilities of belonging to two families and that is what is causing problems. You see like in Japan, with the Japanese Royal family, if the daughter is staying within the Royal family there and she is unable to find a husband, she will be taken care of by the parents, the family. But if she has got some luck and gets a husband, then this will now be stopped and her inheritance will be from the place where is married so as to stop this dual problem which of course nature has imposed on her.

Then the one is on marriage but that one people have already commented on it satisfactorily. So, what I wanted is just a law to protect these rights so that if you are harmed by one of the provisions, you have a way of getting some redress like recently, --.

Hon. Delegate Yusuf Haji: -- thank you very much Mzee.

Hon. Delegate Winston Ogola Adhiambo: Just one point. I made a request for a loan from KCB recently and I was refused.

Hon. Delegate Yusuf Haji: Thank you.

Hon. Delegate Winston Ogola Adhiambo: That one, sorry Mr. Chairman. I was refused because I was too old. But I had something to give as security. Asante sana.

Hon. Delegate Yusuf Haji: Thank you very much. I now recognize 221.

Hon. Delegate Ruth Oniang'o: Mr. Chairman I am Delegate Number 221, Ruth Oniang'o and I want to commend your excellent Chairing yesterday. Anyway let me go straight to the matter here.

This is a very, very important Chapter Mr. Chairman. It is really the core of everything we are doing here and I believe if we get this right, then we shall be heading towards a society where we mutually respect each other and probably head towards a one Kenya something that we are still striving to do.

Now, coming back to the subject here, I believe that we need to realize that rights go with responsibility. It is not just right, not just demanding, not just needs and what I want and I don't get the feel that in this Chapter. I think it should be presented in such a manner that we move from a demand mode to a responsibility and what can I do mode?

Secondly, Mr. Chairman, the whole issue of culture: The Chapter was well researched and well presented. But I believe that it is a new area and a difficult subject and there is a tendency not to recognize and appreciate our own culture. The African culture is extremely rich. There are those aspects we need to discard but at the same time there are those aspects, which make us who we are and if we lose that, then we will no longer exist in this world, as Africans and I believe that we need to pick out those particular aspects and move on with them.

Thirdly Mr. Chairman, the whole issue of abuses. Abuses against women, domestic violence, incest, rape, female genital mutilation, you know, those kinds of abuses. I don't see these coming out very clearly and then;

The issue of widows: In each one of our cultures, I think widows used to be taken care of so that they don't go roaming around and giving a bad name to the clan where they have been married. But for some reason, we are losing that Mr. Chairman and though we talk of women being a marginalized group, I think widows are a very special group and we need to revisit that and take care of it.

Lastly, Mr. Chairman is just the whole issue of food security, Article 50 where we talk of rights to food, food of good quality but also food of good safety, safe food especially given to what is happening to the environment now, so many industries in coming up and our food systems being polluted and we have to worry about the food safety as well even as we talk about quality. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 353 please.

Hon. Joseph Njalis Shuel: Thank you very much Mr. Chairperson. I was thinking that the Conference would end without me speaking. But thank you.

I want to address myself to this Bill of Rights. I want to commend the Commission for the good work they have done.

Hon. Delegate Yusuf Haji: 353. Endelea.

Hon. Delegate Joseph Njalis Shuel: My names are Joseph Shuel from Laikipia District. I want to comment on this very good Chapter and I want to go straight to the particular provisions.

Mr. Chairman as has been echoed by those who have spoken earlier the issue of culture is very important and we are who we are today, we dress and we talk the way we talk because of culture and we carry ourselves because of the way we are. I am seeing a situation where cultural values that have defined us and have made us who we are, are going to be eroded, exploited and used for monetary gains and owing to that I want to bring a motion that as what has been said by the Hon. Delegate ole Sironka, I think some people are using other people's culture and my proposal was and is that we need a provision in Article 63 (1) to provide a Bill, persons not belonging to a cultural, religious or linguistic community may not have the right to practice that particular culture. This is what I am saying because without your permission or whatever it is, because we are seeing a situation even if you cannot, for instance, if you are not a Muslim, you cannot walk into a Mosque and start praying in a Mosque, if you are not a member of that particular group but we are wondering why some people are walking into a culture and even putting on beads and putting other things that we have cultural attachment.

Secondly, I want to echo the view that has been expressed by the person who talked about education and move to Article 58 sub-Article 3 and add that in the, State in trying to implement the free primary education that it should also look into the case of the orphans, the disabled and minority groups in post-primary schools and that could be specifically in Secondary schools so that if the same individual can get some resources to bring them and bring them at par with the rest of other Kenyans.

Something else that, you know, I don't think it's been captured well is the issue of noise. Honourable Chairperson, you will agree with me that if you ever board a Nissan in this City, you will be subjected to a lot of unnecessary noise in the name of music and it is high time that we should be able to make this place a peaceful place for all of us and owing to that, I want to refer the Delegates to Article 43 and would love to introduce a new Clause that goes like this: that, this would be edged, the person subjected to unnecessary noise, because what we are seeing is most of us are subjected to a lot of noise in the name of preaching, in the name of music and this really is destructive and is taking its toll on us.

The issue of family has always been raised but I want to add my voice again on that Mr. Chairperson, that the family is the most important unit in African society and at all costs must be safeguarded and protected. We want to ensure that there will not be homogenous marriages but should be from opposite sex and as has already been said, so in Article 38 (3) I would love to say that they have provided that the persons who are getting married are from opposite sex and not from the sex for that matter.

I also want to add something on Article 82 concerning life. Life is very sacred as we have been told and all of us are aware of that and would love to say that life begins at conception and therefore in my view, the sub-Article one should read like, 'every person including the unborn child has the right to life'. The unborn child here is specified as the person that has not yet been born.

In the Article 30 sub Article Five I would like us to add after the Civil Society, communities and this is to enable communities to address their own issues touching on them.

In Article 29, sub Article (2), I would also want to contribute on this and say that the dignity of the individuals, the families, interest groups and communities and add up those things, so I am adding families, interest groups and communities. Thank you very much Mr. Chairperson.

Hon. Delegate Yusuf Haji: 521

Hon. Delegate Wahu Kaara: Thank you Mr. Chairman, Hon. Delegates, I want to add a voice on this bill of rights because I think it's a very --

Hon. Delegate Yusuf Haji: Give us your names please.

Hon. Delegate Wahu Kaara: I think I am overwhelmed because I did not expect the chance, but I have it. And I am happy for my colleagues here for also lobbying for the eye of the chair to see me. My name is Wahu Kaara, I am a Delegate Number 521 from Religious Organisations. What I want to bring as a contribution is the essence of the fundamental concern of what the Bill of Rights is. And I also want to bring the historical process that has brought us up to here because rights is not just a matter of stating or having them as ideals. We must also contextualize the demands of the time because we have heard this debate of the rights, right from the universal declaration of rights. We have seen how much people have taken so long to be able to come to this level of this Conference. So what I am trying to say is that, the issue at hand now is this Bill of Rights, to be able to carry the spirit of the Kenyans as they have already clearly articulated and shown. That we are not only wanting to state about rights, but we want this Bill of Rights to fundamentally contextualize and manifest very specifically, that we are talking about entitlements to the demands of our lives. And I am saying this and I would wish that this Bill of Rights puts it very clearly that the economic, social and cultural rights are not just matters of statements, but are matters of entitlements, so that each and every citizen can be able to engage when it is not guaranteed. That's why these articles are not really giving this entitlement from my point of view, because; for example when you take the article on housing, that we have a right to access adequate housing. What is that adequate housing? And where is it, and how is it going to be guaranteed? The question of food, and the question of health: All this rights and that is why I am saying, the Bill of Rights, must be able to manifest the value that has been very much over emphasized in this plenary on the question of life. And we know the conflict between

life is the essence of the value of profit. That's why it is very very important for the citizens to have the power, and this Conference must guarantee that we are shifting the centre of power, not from just management of public affairs, but to where power belongs, to where people are, and to where they can be able to dictate and decide on how resources are accessed and how they are distributed. And that's why the spirit of economic, social, and cultural rights as entitlement, is very very critical and very important at this particular time. This is because that is what will help us to be able to engage for example; with this move of privatization of everything and co modification of everything, including the life that we saying that is very much enshrined and defended in this Constitution.

So having said that, I am only pleading with my fellow Delegates, that we realize that this Conference, just like Lancaster Conference was, to hand over for governance by others, but within the status quo. This Conference must shift that power and must go to where people are, so that they can be able to dictate and to guarantee that their life is defended. There is nobody who is going to defend it, it is them who can only be able to defend by being guaranteed that the resources that make sure that that life is there is well distributed and well chaired.

Hon. Delegate Yusuf Haji: Thank you very much.

Hon. Delegate Wahu Kaara: Thank you.

Hon. Delegate Yusuf Haji: 103.

Hon. Delegate Petkay Shell Miriti: Thank you Mr. Chairman, I am Petkay Shell Miriti from Meru South. Delegate Number 103. My first comment will be on persons with disability, article 39(2d), which states that the state shall by registration on policy measures, ensure access to all places. I am appealing that, that provision is not enough, because as we see in the country, persons with disabilities find it very difficult to access various buildings. If for example Mr. Chairman today, one with a wheel chair wanted to come to you there, he/she will find it extremely difficult to reach you. No person on a wheel chair will go to the floor here; it is difficult. So I was suggesting that there be a provision or it is made mandatory for engineering

and architectural designs, to provide for accessibility for persons with disabilities, whether he is visually impaired or crippled.

The other part is on gifted persons, the exceptional persons who are gifted. I feel that the draft has not catered for this. There are Kenyans who are highly intelligent, with IQ ranging over 120 and more often than not, such people once they are recognized as being very clever, are taken out of the country for further education. And the best people in terms of academic qualifications from the country are usually gotten scholarship to go and study out. What happens is that when they go out, the best part of their ideas is drained by foreigners. They come back with education but they leave their ideas in the country where they go for education. I feel that the Constitution should provide for the gifted people with high talent, and high IQ.

My second comment is on article 61, which is on page 12. That is freedom of movement and residence. Mr. Chairman if you read article 61(3), it states that every citizen has the right to enter into, remain in and reside anywhere in the republic. I really don't know how lawyers would interpret this provision in the Constitution, but I see a danger, where Mr. Chairman I could come to your house, on your land, live there and settle there because it's a Constitutional right. I feel that unless this one is well clarified, there will be a danger of misuse by citizens in Kenya, because the way it is, I feel people will come or go to various places, people's private residences and settle there and refer their rights to this section.

Lastly Mr. Chairman, the issue the term prisons and correctional services, article 70 (him) which is on page 15, refers to prisons discipline and the way I see it on article 267, the drafters were trying to avoid the word prison and that's why they included correctional services. I can see there is some confusion here. If we want to adopt prisons, lets adopt prisons and if we want to adopt correctional services, lets adopt correctional services. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 497.

Hon. Delegate Jillo Mumina Konso: Thank you Mr. Chairman. May I draw your attention to article....

Interjection:

(inaudible).

Hon. Delegate Jillo Mumina Konso: My name is Jillo Mumina Konso, I come from Isiolo district, I am a Delegate from women's organization.

Hon. Delegate Yusuf Haji: Your number?

Hon. Delegate Jillo Mumina Konso: 497. May I draw your attention to article Freedom from discrimination clause 3. The article stated, "The state shall not unfairly discriminate directly or indirectly". It says in clause 1, "the state may" and the Delegates have corrected and it should be "shall not make" and then "may take the Legislative and other measures designed to individuals or groups, who are disadvantaged or not as a result of past discrimination, but any other", and then it continues. May I take this opportunity to amend a proposal to that clause and the proposal should read, "Despite clause 1, the state shall take Legislative and other measures including affirmative action program and policies". That is how I wanted it read, that's the correction or amendment, designed to benefit individuals or groups who are disadvantaged or eliminate not and continue as a result of such discrimination and not but any such measures. So I am saying that because affirmative action is meant to correct injustice and it should read that way, instead of those people who are discriminated before should also be safe that they should be reconciled with the state. So that is my proposal and then article 35 on women.

I also wanted to amend a proposal which Article 35 gives a lot of languages concerning women and Bwana Chairman, this language is meant to acknowledge the variety of roles that our women play in Kenya and not only the role as mothers. At the same time it is to acknowledge the unique role that women play in this country; the role as mothers. So I propose that the article will read article 35 (4). "Any law culture or custom and traditions that undermine the dignity, welfare, interest or importance of women... sorry, sorry number 5. The state shall: 5(a) protect women and their rights, taking into account, the amendments should read now, "Protect women and their rights taking into account the variety and extensive role of women in the society", including we add (i) affirmative policies until such time periodically, the time some people had suggested.

Hon. Delegate Yusuf Haji: Point of order. Instead of us going into drafting, we just say the way you feel it should be done. Because drafting can only be done by experts. Just capture the principles.

Hon. Delegate Jillo Mumina Konso: The affirmative action should be put under polices in article 35(b). That is my comment.

Hon. Delegate Yusuf Haji: Thank you very much. 43.

Hon. Delegate Mirugi Kariuki: Thank you Chair, My number is 43, Mirugi Kariuki, I wish to comment on the --

Hon. Delegate Yusuf Haji: Point of order 347.

An Hon. Delegate: Who is this, why not?

Hon. Delegate Nafutali Chelagat. Hon. Chairperson, my names are Nafutali Chelagat District Delegate Baringo. Hon. Chairperson, I think now it is becoming Conference knowledge that some big names are dominating the events of this Conference.

Hon. Delegate Yusuf Haji: Thank you very much, I think the last lady who spoke was not a big one, so please allow me to proceed.

laughter

Hon. Delegate Mirugi Kariuki: Mr. Chairman I wish to correct that, name is not one of a big people but maybe a familiar name now to the Conference. My name is Mirugi Kariuki.

The principle of equality before the law, which is Article 33, sub-section 1. I would like to observe that access to justice has been hampered for a long time by poverty. As long as you remain a poor person, you will have serious problems accessing justice. We need to look at this provision with a view to ensuring that the principle of equality of Arms, as the lawyers call it, is

observed. You get justice on both sides in an advisory system is equally armed to fight for justice. A rich man and a poor man can never be equal, unless the poor man is empowered. And the way to empower the poor man is to make provisions for a national legal way and scheme. And I am proposing that, that should be considered in promoting the position of equality before the law. Article 69 makes a halfhearted attempt, 69 (h); to assist persons who may be accused before courts and he uses the word accused. My observation here is that access to justice should not only be for those accused of the criminal charges. There are those who would like to vindicate their rights through the new Constitution, access court so that their rights are upheld by the courts. Those persons should be able to get assistance.

There is an inbuilt discrimination in article 69(j), it gives the rights to an advocate of your choice. And (h) for those who wish to seek assistance from the state, the lawyer or the advocate has to be picked for you by the state. That's discrimination and I think it should be removed. The other point about article 69(h) is that it gives the right and takes it away through some discretionally provision there. If substantial injustice would otherwise result, that can be abused. We want a right that is clear. If you are going to have access to a lawyer, through the state assistance, then the provision should be as clear as that. And the provision should also embrace both criminal trials, and also civil litigation.

On the right to life, I welcome the provision, said to us that as long as the country upholds death sentence, it has no moral authority to condemn abortion. And I believe that by providing for right to life here and abolishing death sentence, we can now properly say that he can do away with abortion. I would like to take a rider here, that when the life of the mother is in danger, there is always some lay way given. I would like to go a step further and say that when the dignity of a woman is likely to be compromised, some provision should be made. I have in mind situations where girls, women and nuns are raped and have babies they would not like to keep, I think in that kind of provision, to give way to their dignity as people, as women should be made provisional, you don't have to burden them with a child of a rapist, who can not be found and who is really a great trauma to their life.

The final point is on the rights of children and we would probably like to share some experience, article 37 that is 5(a) on the rights of children to a name. In some jurisdiction and in particular

Caribbean, more specifically Cayman Islands. Every child has the right to know who his father is and carry out a DNA Test. Today we have children on the streets, they say we don't know who our fathers are. Today the street children have the names of their mothers. I think that we should be clearer here. A child has a right to know who is father or mother is and that is possible to establish because there is no child without parents.

Now, as far as the issue of forced labour is concerned, article 37 (5e) should be clearer. It has not outlawed child labour. In fact we need a clear provision to say no child below the age of 16 will be employed as a house girl or whatever. You know how much house girls have been abused in this country by the middle class employers. We need a very clear provision and an equivocal language here to say child labour is hereby outlawed. Thank you Chair.

Hon. Delegate Yusuf Haji: Thank you very much 224.

Hon. Delegate Nancy Lung'ahi: Thank you very much Chair. My name is Nancy Lung'ahi Delegate Number 224 from Nairobi. I would like to draw your attention to article 42 (2) on slavery, servitude and forced labour.

“No person may be required to perform forced labour”. I would like to just share the sentiments that the Hon. Delegate who spoke before me had just said. Forced labour here needs to be defined. What is forced labour? When we look under article 37 on children, when you talk about forced labour, we know how much children have been abused and right now when you say forced labour, we don't know what forced labour is, and that is why many people get away with forced labour. This is because there is no clear definition of forced labour.

On article 53(2) on freedom of trade, occupation and profession: It says that, “the practice of a trade, occupation or profession, may be regulated by law”. I think if we leave it like that as to say may be regulated by law, it will provide provisions for people to be able to engage in professions that they will demand should be legalized. So I think we should say we will be regulated by law, so that there is some legislation put in place, so that we don't have an illegal trade being legalized, having said that we would like to remain a country with morals. On articles 55(2) on labour relation that, “everyone has the right to fair labour practices’ and in (v)

“every worker has a right to reasonable working conditions”. What is reasonable working conditions, what is reasonable? We know what has been happening in places like the export processing zone, the flower farms and industries. When you decide to clump people in a hall maybe with no ventilation, its hot and they have been put under very harsh conditions of working; are those reasonable? And I think most of those people are able to get away with it because there is no statement defining what are reasonable working conditions. What is reasonable?

And then article 59 on housing, that, “every person has the right to have access to adequate housing”. I think that we should add there that “and that the government shall put in place measures to ensure that that is realized”. If I take a case in example, and I think this will apply to most of those districts, which are upcoming, I mean a capital city like Nairobi, where we have 60% of people living in the slums. And they occupy 5%. So I don’t know when we talk about adequate housing, does that mean that the 60% of the entire population living on 5%. So I think we should be very specific about saying that the government will ensure that people have the right to have access to adequate housing. Thank you.

Hon. Delegate Wilfred Koitamet Ole Kina: Hon. Delegates, I realise there are still many of you who would like to make your presentations. But I would like to urge you, that it is not possible to have all of you. We had decided to have only one hour for this session and we have even over short that. The Chair has even taken away the rights from you of having your tea break, so may I this time please ask the presenters to react to the presentations and then we will proceed to our tea break after that.

Uproar from the delegates.

Hon. Delegate Wilfred Koitamet Ole Kina: There is a point of order. Point of order.

Hon. Delegate Teresa Ogutu Usunga : I am Delegate Number 411 from Homabay Nyanza, Ogandi girls. I do not understand the procedure, because first of all I cannot know when it has reached my section. I have raised my hands from yesterday and I have sought to speak and I now cannot speak. Now my question is, can I give you the notes because now I cannot speak?

Hon. Delegate Wilfred Koitamet Ole Kina: Well, let me assure every Delegate that, we are going to break into working groups and you will be entitled to present your presentations or your sentiments to the group that will be dealing with this chapter. It is not possible for us to deal with this chapter now. So may I take this opportunity to ask Prof. Yash Pal Ghai, Mr. Chairman, who was stepping in for Com. Lethome to react to his position?

Prof. Yash Pal Ghai: Thank you Mr. Chairman, there had been a very large number of very interesting comments, I will not really have time to deal with them all, nor really is it our function to comment on your comments, I think many points that you have made are valid and the proper place for a detailed discussion of that is the technical committee that the Chair just referred to. I would like just to mention some very broad issues that have been raised.

A number of you have commented on the question of culture and how this draft does not sufficiently address the question of culture particularly, African culture. I would just like to make two or three comments on that. One is to say that many of the proposals that we received especially from women and also from other groups, suggested rights which are inconsistent with some traditional cultures. This is a problem that every country has faced. When human rights were introduced, there were certain cultural values or practises, which have to be clarified. This is because many communities do not treat women and men equally. And we believe in equal treatment, then clearly some cultural practises have to be modified to fit in with that.

The balance between a culture of a particular community and the universal notion of rights has to be struck in the context of each country. And I would say that article 31, to which I drew attention yesterday, which enables Parliament to limit the rights of individuals is a mechanism in a way of recognizing community values. And so it says a strong justification related to the lifestyle of a community; then let me justify the qualification of a right, so that section enables a balance to be struck between universal norms and the traditions of a particular society.

The second point that I want to make is that there are a number of provisions in other chapters of the Constitution, which deals with culture. The chapter on land specifically acknowledges that, there are communities in Kenya, which have different lifestyles from other communities. In

many cases, land is central to the question of that lifestyle. Many pastoral communities spoke to us about the need to preserve a communal form of ownership and communal form of management of land. This is acknowledged in the chapter on land. Similarly many cultural practises are related to the environment, how we live with nature. And again the Chapter of environment acknowledges the validity of the different cultural practises about the environment. So culture is dealt with in a number of different parts of the Constitution, but if it is felt that the balance has not been struck properly between universal norms and particular culture, that is a matter I think we can take up in the drafting committee or the technical committee. It is a very interesting and very important point, and I think we need a lot of time to look at that when the matters refer to a committee on human rights.

The third point that I want to make is in a way related to this question of culture. Have we ignored responsibilities at the expense of rights? I would say we haven't. First of all to again come back to article 31, it allows Parliament to strike a balance between community obligations on one hand, and rights on the other. Secondly, we have already discussed I think in an earlier session, article 15 which lists the duties and the responsibilities of citizens, of residents, of corporations. So, it is true that that particular section on duties does not appear in the chapter on rights, but the duties that we all owe to the country and to each other and to our communities is acknowledged in article 15.

The fourth point I want to make is on a passionately put question, that rights should be seen as entitlements and that particularly economic and social rights should be seen as entitlements. Certainly the view of the Commission is the same, we believe that economic and social rights should have the same status as other kinds of rights. If you look at the scheme of Bill of Rights, social and economic right appear in the same chapter as civil rights. Some Constitutions separate, right to housing, right to education, right to health, to medicine, they separate those from social economic rights and say that these economic and social rights are not enforceable, They are aspirations. We have not taken that line. We have followed the South African Model where economic social rights are part of the main Bill of Rights and are enforceable as much as other kinds of rights. So they are entitlements and are binding on the government.

The question about access to justice is a very important point. We don't deal with that in the right to equality before the law. If we deal with the access to Court in a number of different points, if you can look at article 73(b), we talk of access to Court. We are suggesting that it should be possible for people to go to Court without having very extensive procedures. The Indian Supreme Court has developed a very easy way of access for the poor, for the disadvantaged to the courts. And we are suggesting we should adapt that kind of model, which South Africa has also done. In the chapter on the courts and the legal systems we specifically deals with the question of access of courts, the question of court fees, the location of courts, so that everybody has physical access apart from financial and other access to courts. So these questions have been dealt with but not in article 33.

Many points that Hon. Haji reminded you are really points of drafting. For example somebody raised the question; what are reasonable working conditions? These should be defined. Well it is very hard to define reasonable working conditions, because they vary from occupation to occupation, they change with time. So, we have to live it to Parliament to define what a reasonable and focus ultimately to see whether Parliament has got it right. There are always questions of standards, in law making and in the Constitution it is not desirable to get into a very great deal of details. These are matters to be dealt with in the Legislation, in the court rulings and so on. Another point can be made about some other commentators who have asked for greater clarifications and so on. Of course we could try to be as clear as possible, but there is a danger that in trying to do that, we will have too much details and already many Hon. Delegates have commented and correctly in my view that the document is very long as it is and certainly should not add to the length, we should look for ways in fact in which we can make it a bit shorter.

There are very many other points that I could comment on that there really isn't time. All I want to say is that these are valuable points that you have made, they merit much more detailed discussion. I am hoping that that discussion will take place in the committee on human rights. Thank you very much.

Com. Nancy Baraza: Thank you very much, Mr. Chairman, I don't think I want to undo what the learned Professor has explained, I think he has given explanations to most of the issues that have been brought up.

An Hon. Delegate: I have a point of order.

Hon. Delegate Wilfred Koitamet Ole Kina: What is your point of order?

An Hon. Delegate: Mr. Chairman I wish to draw your attention to Rule 16 of the Conference regulation. I have been warned. Mr. Chairman I am trying to say that there is no quorum at this point in time. And I would rather that you take action in the pulpit.

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you very much. In fact we have just arrived at that session. We are going to break early today, because the Muslims are going to pray and we are resuming at 2:30 pm. Thank you very much.

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